IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76- 76-730

WILLIAM T. ADKINS,

Petitioner,

v.

I. T. O. CORPORATION OF BALTIMORE and LIBERTY MUTUAL INSURANCE COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

AMOS I. MEYERS
The Tower Building
Baltimore Street & Guilford Ave.
Baltimore, Maryland 21202

THOMAS W. GLEASON
17 Battery Place, Suite 600
New York, New York 10004
Attorneys for Petitioner

AMOS MEYERS
THOMAS W. GLEASON
HERZL S. EISENSTADT
Of Counsel

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Petitioner prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit, entered in this case on August 26, 1976.

Opinions Below

The opinions of the Court of Appeals on rehearing *in banc* ("Adkins II"), decided August 26, 1976, are not yet officially reported and appear at pages 1-16 of the Appendix hereto.* The opinions of the Court of Appeals panel which initially determined this case, issued on December 22, 1975, are reported at 529 F.2d 1080 ("Adkins I"). They appear at pages 17-61 of the Appendix. The underlying decision of the Benefits Review Board, Department of

* Pages of the Appendix are designated "App. *(Page Nos.)*."

Labor, dated November 29, 1974, affirming the Decision and Order of the Administrative Law Judge on March 26, 1974, allowing a claim for compensatory damages under the Longshoremen's and Harborworkers' Compensation Act, 33 U.S.C. §§ 901-950 ("the Act"), is reported at 1 BRBS 199. It appears at page 63 of the Appendix. The Decision and Order of the Administrative Law Judge ("ALJD") is unreported. It appears at page 68 of the Appendix.

Jurisdiction

The judgment of the Court of Appeals following rehearing *in banc* was entered on August 26, 1976. This Petition was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Whether a member of a longshore unit who is working in the final terminal phase of the movement of maritime cargo prior to its acceptance by the inland consignee, is "engaged in longshoring operations" within the meaning, as stated and intended by Congress, of Section 2(3) of the Longshoremen's and Harborworkers' Compensation Act, 33 U.S.C. § 902(3)?

2. If so, whether the legislative presumption in favor of a claim and judicial declarations favoring liberal construction of the Act, preclude disallowing the claim of a longshoreman injured while engaged in such operations, by reason alone of a hiatus in the movement of the cargo while it is still under the jurisdiction, responsibility and control of the maritime carrier and its agents?

Statutes Involved

The pertinent provisions of the Act, as amended in 1972, are as follows:

Section 2(3), 33 U.S.C. § 902(3):

> The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

Section 3(a) of the Act, 33 U.S.C. § 903(a):

> Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel). . . .

Section 20, 33 U.S.C. § 920 (*Presumptions*):

> In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—
>
> (a) That the claim comes within the provisions of this chapter. • • •

Statement of the Case

Petitioner, William T. Adkins ("Adkins"), is a member of Local 333, International Longshoremen's Association, AFL-CIO ("ILA") with 11 years employment on the waterfront. He is an employee of I.T.O. Corporation of Baltimore ("ITO"), a contract stevedore and terminal

operator. ITO was under contract to United States Lines, Inc. ("U.S. Lines") to provide services attendant to the movement of cargo at the Dundalk Marine Terminal, Baltimore, Maryland, prior to and following its transportation aboard U.S. Lines' vessels. ITO hires longshore labor through the ILA dispatch center to physically perform its various services.

On March 2, 1973, a container* "stuffed" with cases of brass tubing was discharged from a U.S. Lines vessel, the S.S. American Legend.** The relevant shipping documents indicated that the container was not to be delivered intact to the inland consignee. Rather, the container was to be "stripped" at the waterfront terminal and only the cargo was to be delivered to the consignee or its delivery agent who would pick it up at the terminal. The stripping process was to occur at shed #11, a consolidation shed operated by ITO and located on the terminal premises approximately 685 feet from the water's edge. Inasmuch as inbound containers are often unloaded in large numbers at a time, they must often await their turn to be processed at shed #11, whose facilities are limited.

Terminal shed #11 is a location inside the Marine Terminal where numerous outbound pieces of loose (non-unitized) cargo are initially received by the vessel carrier from various consignors. Longshore unit employees such as Adkins, along with ILA checkers, sort the non-unitized cargo by destination. The cargo is then stuffed into con-

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* Sealable, metal box-like enclosures of varying sizes for shipment of large single or numerous less-bulky items.

** "Stuffing" is the process of loading cargo into a container: "stripping" is the process of removing cargo from a container. Longshoremen traditionally have performed this function at piers and terminals in ports on the East and Gulf Coasts of the United States. See petitions in *International Longshoremen's Association* v. *National Labor Relations Board, et al* and *New York Shipping Association, Inc.* v. *N.L.R.B., et al.*, U.S. Nos. 76-570, 76-569 (filed Oct. 22, 1976). See also *ALJD*, App. 77-78.

tainers which eventually are placed aboard U.S. Lines vessels, all this work being performed by longshore unit members represented by the ILA. Terminal shed #11 is also a situs where U.S. Lines delivers in(land)bound non-unitized cargoes to the consignees or, as in the instant case, to their truckmen. Adkins thus was engaged in performing miscellaneous operations on *both* inbound and outbound cargoes.* See ALJD, App. 71 (No. 13).

The abovementioned container housing the brass tubing was hauled to the terminal yard (a/k/a "marshaling yard") beyond shed #11 where it remained for three days. It was then moved by a tractor device, known as a "hustler", to shed #11 and was backed up to an apron at an open door at which time it was stripped. The cargo remained in the shed to await its delivery to the consignee.

The consignee's truckman arrived on March 9, 1973 to pick up the cargo. Adkins, together with an ILA checker, was assigned to load the cases from the shed onto the truckman's flatbed truck. In the course of operating a fork-lift tractor, one of the nearby cases fell and struck Adkins, fracturing his right leg and injuring his back. As a result, he required extensive treatment and was out of work for a substantial period of time. App. 72 (No. 16).

Adkins initially filed for compensation with the Workmen's Compensation Commission of the State of Maryland. He subsequently abandoned his claim for State compensation and filed a claim with the Federal Office of Workers' Compensation Programs in order to obtain the greater benefits which became available to longshore personnel under the 1972 Amendments to the Act.

The Department of Labor's Administrative Law Judge and thereafter its Benefits Review Board ("the Board")

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* Non-stripped containers are delivered intact to a trucking company for the consignee or for a warehouse outside the Marine Oct. 22, 1976).

sustained Adkin's claim for benefits. They found that the functions performed by Adkins and his fellow employees in the terminal shed were the first and last tasks in a series of longshoring operations in the movement of ocean cargo. They therefore determined that the place of injury was "upon navigable waters of the United States," as that term is defined in the Act, and that Adkins was an employee engaged in a function within the scope of "maritime employment" under the Act.

ITO and its insurer, Liberty Mutual Insurance Company, appealed the Board's determination to the United States Court of Appeals for the Fourth Circuit. That Court initially considered the instant case together with two other cases arising under the Act, *Marine Terminals, Inc. and Aetna Casualty and Surety Co.* v. *Secretary of Labor and Donald D. Brown* (Docket No. 75-1075, Fourth Circuit, 1975) and *Maritime Terminals, Inc. and Aetna Casualty and Surety Co.* v. *Vernie Lee Harris and United States Department of Labor* (Docket No. 75-1196, Fourth Circuit, 1975). The majority of the three-judge reviewing panel resorted to the legislative history of the amendments to overturn the Board's decisions favoring all three claimants, by creating and applying a shifting "point of rest" criterion for relief. It found that Brown, who was injured in a similar terminal shed in Norfolk, Virginia in the process of stuffing a container, and Harris, who was injured in Norfolk while driving a hustler hauling a container—both on *outbound* shipments—were claiming benefits that occurred prior to the last point of rest (i.e., the marshaling area adjacent to the pier) in the loading process; and that Adkins was injured land-ward of the first point of rest in the vessel unloading process (i.e., the terminal yard). Though they were found to have met the Act's "situs" test, 33 U.S.C. § 903(a), they were not found to be "employees" within the meaning of the Act. App. 31-32.

Judge Craven, dissenting, unlike the majority experienced no difficulty in defining "maritime employment" under the Act. He looked to (a) the "plain language of the statute"; (b) the statutory presumption and the rules of statutory construction of this Act favoring claims; (c) the consistency of administrative interpretations of the Act in upholding these and similar claims; and (d) the essential characteristics of maritime cargo. App. 38-40, 42-45, 52. He rejected the majority's "point of rest" theory as untenable in the context of longshore terminal operations, and concluded that all three employees were engaged in "maritime employment" at the times of their injuries.

On rehearing *in banc,* four of the six sitting judges reversed the panel majority and granted relief to Brown and Harris, while sustaining the earlier decision with respect to Adkins. Chief Judge Haynsworth and Judges Russell and Winter subscribed to the views expressed by the majority in the original decision. In Judge Widener's view, though agreeing in principle with them, he further modified their "point of rest" standard. He considered Harris and Brown to be covered employees, inasmuch as they were engaged in the "overall process of loading the ship". He denied relief to Adkins because he was not participating in the unloading process. He reasoned that the cargo, having been stored "for convenience or facility", thereby no longer was being unloaded from the ship but rather was in the process of being loaded into a delivery truck for "transhipment." Judge Craven, joined by Judge Butzner, maintained his earlier position in dissent.*

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* The issue and contentions regarding the status of the Director, Office of Workers' Compensation Programs, Department of Labor, as a proper respondent in both proceedings before the Court of Appeals was treated and determined in both Adkins I and II. Petitioner does not deem the resolution of that issue as essential to the Court's deliberations on the instant Petition for a Writ of Certiorari.

Reasons for Granting the Writ

1. The Decision Below Directly Conflicts With a More Recent Decision in the Fifth Circuit and in Principle With Decisions in the First and Second Circuits, Warranting Timely Clarification of Important, Far-Reaching Legislation.

The Court already has before it Petitions for Writs of Certiorari to the United States Courts of Appeals for the First and Second Circuits in *John T. Clark & Son of Boston, Inc. and American Mutual Liability Insurance Co.* v. *John A. Stockman and Director, Office of Workers' Compensation Programs, United States Department of Labor* (U.S. No. 76-571); *Northeast Marine Terminal Company, Incorporated, and State Insurance Fund* v. *Ralph Caputo and Director, Office of Workers' Compensation Programs, United States Department of Labor* (U.S. No. 76-444); *International Terminal Operating Co., Inc.* v. *Carmelo Blundo and Director, Office of Workers' Compensation Programs, United States Department of Labor* (U.S. No. 76-454). Each of those employer/insurer petitioners seeks to overturn appellate decisions which sustained the Benefits Review Board's findings that the terminal employees therein were covered under the Act. This Petitioner necessarily disagrees with their contentions respecting the ultimate outcome of the merits in those cases. Nevertheless, he concurs with their conclusions and with those of the Courts in the related cases whose opinions they cite, to the effect that there is an urgent, practical need for resolution by this Court of the conflicting decisions on the important and recurring question of the proper interpretation of coverage under the 1972 amendments to the Act.*

The conflicts and confusion engendered by the majority and dissenting opinions in these and other interpretative

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* See, e.g., *Caputo* Petition at pp. 4-6; *Blundo* Petition at pp. 8-10.

cases are adequately discussed in the *Blundo* Petition at pp. 12-19 (second paragraph). Moreover, the Solicitor General, in his Memorandum for the Federal Respondent in the *Caputo* case, recognizes that

> "[t]his conflict among the Circuits is undesirable. It has created uncertainty, and uncertainty has led to a flood of litigation. . . . The Act is designed to be self-administering in most cases, but this has become impossible in the light of prevailing uncertainties concerning the extent of the Act's coverage." (*Caputo* Memorandum at pp. 6-7)

The Solicitor General repeatedly suggests that *Caputo* is an excellent case for resolution of the conflicts between the Circuits concerning the scope of shore-side coverage under the amended Act. *Caputo* Memorandum at p. 7; *Blundo-Stockman* Memorandum at p. 2. He therefore recommends that a Writ of Certiorari be granted in *Caputo* and that consideration of *Blundo* and *Stockman* be deferred pending this Court's disposition of *Caputo*. *Blundo-Stockman* Memorandum at p. 3.

This petitioner respectfully suggests that the instant case presents an even more compelling vehicle for review. Whether in the immediate context of the opinions below or in juxtaposition to another case in which a petition was recently filed with the Court, *Jacksonville Shipyard, Inc.* v. *Perdue,* 539 F.2d 533, 543 (Fifth Circuit, September 27, 1976; No. 75-2289, *Diverson Ford*), Pet. for Writ of Cert. filed *sub nom. P. C. Pfeiffer Co.* v. *Ford* (U.S. No. 76-641, docketed Nov. 8, 1976), *Adkins* poses a more direct and unqualified conflict, not only of results but of rationale as well, than exists between the opinions in *Caputo*. In *Ford,* as in *Caputo* and *Adkins,* there was a hiatus in time between deposit of the maritime cargo *preparatory* to delivery to the consignee and the final step in *effectuating* such delivery by its transfer to the consignee. However, the Fifth Circuit in *Ford* specifically rejected the "point of

rest'' analysis in the majority opinions below, agreeing in principle with dissenting Judge Craven that it is neither to be found in the statute itself nor in the legislative history of the Act. App. 48-51; 539 F. 2d 540, 543. And unlike the Second Circuit in *Caputo,* the Fifth Circuit did not fashion any requirements for *Ford* to establish, *as well,* that he had spent a significant part of his time loading or unloading vessels. *Ibid.;* Appendix, *Caputo* Petition at 42a.

In view of the clear-cut conflicts between *Adkins, Ford* and *Caputo,* all of which are now before the Court on Petitions for Writs of Certiorari; of the comprehensive opinions in Adkins I below, which articulate the respective positions not only of the Fourth Circuit alone, but as well of the fundamental issues of interpretation, application and coverage in all of the cases now or prospectively pending before this Court on similar petitions;* and of the repeated references, by contrast, to *Adkins* in all of the petitions heretofore filed with the Court, we commend the instant case as most opportune and pivotal for this Court's consideration of the essentially common theme in all of the pending cases.

Petitioner further notes that the close division of the Court in Adkins II was created by Judge Widener's seeming inconsistent injection of the additional criteria of "convenience" to his colleagues' insertion of the transitory "point of rest" rule. These judicially-established requisites are neither measured nor even mentioned in the statute or in the legislative history, *nor* are they determinative in any of the other pending cases.

Accordingly, deference to *Caputo,* as suggested by the Solicitor General, will not resolve *Adkins.* Assuming, *arguendo,* that the Court agrees with the consonant urging of all petitioners, that the issues and conflicts in interpreting and applying the revised Act warrant review by this Court,

* By the time of filing of this Petition the Court should have before it petitions of the respondents in *Brown* and *Harris.*

we respectfully submit that a Writ of Certiorari should issue to the Fourth Circuit below, whether separately or simultaneous with Writs to that Court or to the other Courts of Appeals respecting any one or more of the above-mentioned related cases.

2. The Fourth Circuit Court of Appeals Has Given a Strained and Over-Restrictive Interpretation to a Remedial Statute. It Has Departed From the Dictates of the Statute Itself as Well as From the Admonitions of This and Other Courts to Render Interpretations in Favor of Claims. This Situation Calls for an Exercise of this Court's Supervisory Powers.

As stated by Judge Craven in his dissenting opinion in *Adkins I,*

> ". . . the 1972 amendments to the Act are of a remedial nature, designed to correct inequities worked by the Act prior to its amendments. With this in mind, we should be guided by a uniform line of cases holding that the Longshoremen's and Harborworkers' Compensation Act should be liberally construed in light of its remedial nature and humanitarian purpose. *See, e.g., Reed* v. *Steamship Yaka,* 373 U.S. 410 (1963), *rehearing denied,* 375 U.S. 872 (1963); *Voris* v. *Eikel,* 346 U.S. 328 (1953); *Pillsbury* v. *United Engineering Co.,* 342 U.S. 197 (1951); *Nalco Chemical Corp.* v. *Shea,* 419 F. 2d 572 (Fifth Cir., 1969); *Calbeck* v. *A. D. Suderman Stevedoring Co.,* 290 F. 2d 308 (Fifth Cir., 1961); *Old Dominion Stevedoring Corp.* v. *O'Hearne,* 218 F. 2d 651 (Fourth Cir., 1955); *Blackwell Construction Co.* v. *Garrell,* 352 F. Supp. 192 (D.D.C. 1972); *Page Communications Engineers Inc.* v. *Arrien,* 315 F. Supp. 569 (E.D.Pa., 1970); *Holland America Insurance Co.* v. *Rogers,* 313 F. Supp. 314 (N.D. Cal. 1970); *Gibson* v. *Hughes,* 192 F. Supp. 571 (S.D.N.Y., 1961)." (App. 38-39)

In amending the Act in 1972, Congress obviously had these interpretive prescriptions in mind, inasmuch as it retained intact Section 20 of the Act, 33 U.S.C. § 920, whereby in *any* proceeding for enforcement of a claim for compensation, the adjudicating authority must presume "in the absence of substantial evidence to the contrary" that the claim comes within the provisions of the Act. *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 474 (1947); *Overseas African Construction Corp.* v. *McMullen*, 500 F. 2d 1291 (2 Cir., 1974). See also *Davis* v. *the Department of Labor*, 317 U.S. 249, 256 (1942).

The majority in *Adkins II* delineated two separate, amorphous and non-existent lines of demarcation between *Brown* and *Harris* on the one hand, and *Adkins* on the other, notwithstanding that all three longshoremen were variously engaged in the handling of maritime cargo. That cargo did not lose its identity as such while it was under the control of the maritime carrier and its agent before it was finally turned over to the jurisdiction of the consignee or its agent. Though Adkins was denied relief while engaged in part of the "overall (inbound) process" of unloading a ship, the newly-critical factors ostensibly created by the divided majority would not apply equally to an outbound movement of identical cargo in the "overall process" of loading a ship. See discussion of the *Brown* and *Harris* cases (App. 5-6) and *Perdue, supra,* at 544 (No. 75-4112, *Will Bryant*), Pet. for Writ of Cert. filed *sub nom. Ayers Steamship Co.* v. *Bryant* (U.S. No. 76-641, docketed Nov. 8, 1976). In such circumstances, it can hardly be said that there is "substantial evidence to the contrary." The statutory presumption remained dominant, yet was ignored.

We respectfully submit that what actually is at stake transcends the resolution of Adkins' claim. This Court, in *Voris, supra,* 364 U.S. at 333, declared that "[t]his Act must be liberally construed in accordance with its purpose, and in a way which avoids harsh and incongruous results", citing *Baltimore & P.S.B. Co.* v. *Norton*, 284 U.S. 408, 414,

76 L. ed. 366, 369, 52 S. Ct. 187. If restrictive and irrational interpretations of the statute—contrary to the legislative and judicial intent—of the majority opinions below are permitted to stand in Adkins' case, then the fictional and peripatetic "point of rest", "time" and "convenience" factors will appear to be valid. They will be used by this and other Courts of Appeals in reviewing the numerous Benefits Review Board decisions now pending before them, which are growing in numbers at an alarming rate. See *Blundo* Petition, pp. 10-11, at footnote 7. The result will be harsh and unequal treatment of members of the identical longshore unit while engaged in miscellaneous phases in the movement of the identical piece of maritime cargo, whose identical injuries are caused by the sudden shifting of that same piece of cargo.• Indeed, such incongruous results could befall the very same individual, whose entitlement to compensation is fatefully determined by the fortuitous circumstance of an event (e.g., requirement for temporary storage pending arrival of consignee for transshipment) which he, and his employer, cannot anticipate or control.••

• The Solicitor General claims that Caputo was engaged in the longshore function most remote from the unloading of the vessel proper. Yet, it is evident that if a longshoreman were injured in the more distant terminal yard while bringing the container here involved to shed #11, he *would* be covered under Judge Widener's reasoning.

•• The Fifth Circuit in *Perdue,* in accord with the Second Circuit in *Caputo,* perceptively pointed out that it would be wholly artificial—and create an injustice—if the respective longshoremen would be denied coverage simply because of an interruption in time created by the cargoes having been temporarily stored. Both longshoremen admittedly would be covered under the Act were they engaged at the time of their injuries in other work at the same situs of their injuries as part of a continuous operation between the vessel (or pier) and delivery to the consignee's vehicle for inland transhipment. *Perdue, supra,* 539 F. 2d at 543; *Caputo* (unreported) at p. 39a of the Appendix to the *Caputo* Petition. For example, if Adkins, employed generally in shed #11 (See pp. 4-5, *supra*) had been injured in the process of stripping the cases of tubing from the container, or, like Brown, while stuffing an outbound container, this petition would be avoided. See ALJD, App. 76, 78 (Second Paragraph).

It is beyond question that Congress intended to eliminate the differences in compensation coverages for injuries suffered in the longshore handling of cargo transported by vessels, where such incidents occur on shore rather than on ship.* Yet, the essence of that distinction ironically will persist under the rationale of the decisions below. Rather than to create a uniform, readily-applicable policy and guideline for administrative application, the reviewing agency and Courts of Appeals will be required, under the theories propounded below, to continue to strain under the facts of each and every case, in deciding whether any particular claimant is or is not covered. This will lead to more than a mere proliferation of litigation. It evinces an erroneous and unrealistic understanding of the process of longshore operations *and* of the purposes behind the 1972 amendments. It effectively nullifies what Congress set out to accomplish, in the scheme of which Adkins' situation is the example that should prove the rule.

CONCLUSION

For the foregoing reasons, Petitioner respectfully urges the Court to grant a Writ of Certiorari herein.

Respectfully submitted,

AMOS I. MEYERS
The Tower Building
Baltimore Street & Guilford Ave.
Baltimore, Maryland 21202

THOMAS W. GLEASON
17 Battery Place, Suite 600
New York, New York 10004

Attorneys for Petitioner William T. Adkins

AMOS MEYERS
THOMAS W. GLEASON
HERZL S. EISENSTADT
Of Counsel

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* See ALJD's quotation from p. 75, Legislative History of the 1972 Amendments to the Act at App. 76.

APPENDIX

OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT SITTING IN BANC

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 75-1051

I.T.O. Corporation of Baltimore, Employer, and
Liberty Mutual Insurance Company, Carrier,
Petitioners,

v.

Benefits Review Board, U.S. Department of Labor,
Respondent,

William T. Adkins,
Respondent,

International Longshoreman's Association,
Amicus Curiae.

No. 75-1075

Maritime Terminals, Inc., and
Aetna Casualty and Surety Co.,
Petitioners,

v.

Secretary of Labor, and Donald D. Brown,
Respondents.

No. 75-1196

Maritime Terminals, Inc., and
Aetna Casualty and Surety Co.,
Petitioners,

v.

Vernie Lee Harris, and
United States Department of Labor,
Respondents.

No. 75-1088

National Association of Stevedores, et al.,
Petitioners,

v.

Benefits Review Board, U.S. Dept. of Labor,
Respondent,
William T. Adkins,
Respondent.

On Rehearing In Banc.

see 44 LW 2347 for original CA 4 opinion

Argued May 4, 1976 Decided Aug. 26, 1976

Before Haynsworth, Chief Judge, Winter, Craven, Butzner, Russell and Widener, in banc.

* * *

Winter, Circuit Judge:

These consolidated appeals present two major questions: (1) the extent of coverage of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 *et seq.* (sometimes "LHWCA"), to persons engaged in the necessary steps in the overall process of

loading and unloading a vessel but who, prior to the Amendments, could claim benefits for accidental injury or death, sustained in the process, only under state law; and (2) whether, in a petition for review under 33 U.S.C. § 921(c), the Director, Office of Workers Compensation Programs, Department of Labor, is a proper respondent. The appeals were first heard and decided by a divided panel of the court. I.T.O. Corp. v. Benefits Review Bd., 529 F.2d 1080 (4 Cir. 1975). Chief Judge Haynsworth and I comprising the majority, held that during the loading and unloading process the coverage of the Act extended to the first (last) point of rest. As applied to the facts, this holding resulted in the conclusion that none of the three claimants was entitled to benefits. Judge Craven was of a contrary view. He would have held that the three claimants were engaged in maritime employment on navigable waters of the United States, as defined in the Act, and hence they should be entitled to benefits under the Act for their accidental injuries. The panel was unanimous in deciding that the Director was not a proper respondent, although it was recognized that, in a proper case, he might be permitted to become an intervenor.

Because of the importance and novelty of the questions decided, the entire court granted cross-petitions for rehearing and reheard the appeals in banc. At the time the appeals were reargued, the in banc court consisted of six judges.

I.

On the issue of the extent of the Act's coverage, Chief Judge Haynsworth, Judge Russell and I subscribe to the views expressed in the majority panel decision. Judge Widener subscribes to the principle expressed in that opinion, although he defines the exact point between coverage and non-coverage somewhat differently.

In his application of the principle, Judge Widener concludes that the claimant Adkins is not covered by the Act, but that claimants Brown and Harris are covered. He reasons that the test of coverage is whether an otherwise eligible employee is injured while engaged in loading or unloading a ship; coverage would not extend to activities for transshipment of goods removed from a ship or goods destined for a ship. In Adkins' case, a container was removed from the ship and stored in the marshaling area. From there the container was moved to a shed where it was stripped and the contents were stored. Adkins was injured when he was moving the contents from the storage area onto a waiting delivery truck. The cargo was no longer being unloaded from the ship but was in the process of being loaded into a delivery truck. Adkins, in Judge Widener's view, was thus not covered because he was not participating in the unloading process; he was handling the goods for transshipment. Accordingly, Judge Widener concurs in the judgment of Chief Judge Haynsworth, Judge Russell and me to reverse Adkins' award.

In Brown's case, the cargo was brought from somewhere inland and deposited in a warehouse. Brown, operating a forklift, picked up cargo and stuffed it into a container. While stuffing the container, Brown was injured. When the stuffing would have been completed, a hustler would have carried the container to the marshaling area, and from there the container would have been taken to the pier to be loaded on board. Thus, in Judge Widener's view, Brown was engaged in the overall process of loading the ship. The cargo was not merely being moved to storage for convenience or facility; the cargo was in the process of being loaded on

board ship, and Brown was engaged in the loading process. Accordingly, Judge Widener concurs in the judgment of Judge Craven and Judge Butzner to sustain the award made to Brown.

Harris was a hustler who was injured while he was taking a container, stuffed with goods which had been stored after inland delivery, from the stuffing area to the marshaling area. From the marshaling area, the container would have been taken to the pier where it would have been loaded on board. The goods were being moved solely for loading purposes, not for mere convenience, and therefore, in Judge Widener's view, Harris, like Brown, was engaged in the overall process of loading the ship. Accordingly, Judge Widener concurs in the judgment of Judge Craven and Judge Butzner to sustain the award made to Harris.

Judge Craven and Judge Butzner subscribe to the views expressed by Judge Craven in his dissenting panel opinion, and for those reasons and the additional reasons expressed by Judge Butzner in his separate opinion attached hereto, they vote to affirm the awards made to Adkins, Brown and Harris.

By the majority votes of Chief Judge Haynsworth, Judge Russell, Judge Widener and me, the award to Adkins (Nos. 75-1051 and 75-1088) is reversed. By an equally divided court, the awards to Brown and Harris (Nos. 75-1075 and 75-1196) are affirmed.

II.

On the issue of whether the director is a proper respondent, an issue raised only in Nos. 75-1051 and 75-1088, Chief Judge Haynsworth, Judge Russell, Judge Widener and I subscribe to the views expressed in the majority panel decision as hereafter amplified. Judge Craven and Judge Butzner subscribe to the views expressed in Judge Butzner's separate opinion attached hereto.

III.

Chief Judge Haynsworth, Judge Russell, Judge Widener and I amplify our conclusion that the Director is not a proper respondent as follows:

Prior to the 1972 Amendments, the Act provided for judicial review by an injunction suit against the deputy commissioner making a compensation award. The pertinent part of 33 U.S.C. § 921(b) (1970), *as amended,* 33 U.S.C. § 921(c) (1976 Supp.), provided:

> If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in . . . the judicial district in which the injury occurred . . . .

One of the 1972 Amendments revised § 921 so that subsection (c), the counterpart of the previous subsection (b), now provides:

> Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States Court of Appeals for the circuit in which the injury occurred, by filing in such court . . . a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted . . . to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings . . . .

Certainly the deputy director was a party to pre-1972 litigation, but neither he nor his counterparts is expressly designated as a party by the 1972 Amendments. The legislative history is unenlightening as to the reason for this omission. While it is true that old § 921a[1] provided that the United States Attorney would represent the Secretary or the Deputy Commissioner in any court proceedings under old § 921, and that § 921a was continued by the 1972 Amendments although modified to permit the Secretary to appoint his own counsel,[2] the legislative history is again unenlightening. To conclude from the mere existence of new § 921a that the Secretary, or his designee, the Director, is automatically a party to a review proceeding is to beg the question. This section's existence can as well mean only that if otherwise made a party, *e.g.*, by intervention in a review proceeding, the Secretary or Director will be represented by attorneys appointed by him.

Indeed, § 939(c)(1), added by the 1972 Amendments, suggests the latter reading. It provides that "[t]he Secretary may, upon request, provide persons covered by this chapter with legal assistance in processing a claim." It would be a redundancy for the Secretary to be authorized

[1] 33 U.S.C. § 921a, *as amended,* 33 U.S.C. § 921a (1976 Supp.):

> In any court proceedings under section 921 of this title or other provisions of this chapter, it shall be the duty of the United States attorney in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the Secretary of Labor or his deputy commissioner when either is a party to the case or interested, and to represent such Secretary or deputy in any court in which such case may be carried on appeal.

[2] 33 U.S.C. § 921a (1976 Supp.):

> Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 921 of this title or other provisions of this chapter except for proceedings in the Supreme Court of the United States.

to provide legal services to a prevailing claimant if the Secretary himself was intended actively to litigate to sustain an award.[3] Thus, unlike the pre-1972 Act and numerous other laws providing for judicial review or orders of administrative agencies,[4] the LHWCA, as amended in 1972,

[3] We fail to understand how the Director's statutory duty to provide legal assistance to claimants confers upon him a stake in the proceedings independent of that of any claimant, as apparently urged by the dissent. The issue we confront is not whether the Director may appear before us as Adkins' representative, but whether the Director may participate in his own behalf.

We also note that we find nothing in the statute or its legislative history to indicate that the availability of legal assistance to claimants may be made to turn upon whether the Director agrees or disagrees with the decision which a claimant seeks to appeal, as the dissent appears to suggest, *infra,* slip opinion at 20 ("*If he deems the decision erroneous,* his statutory duty to assist the claimant includes seeking review.").

[4] Most other statutes providing for judicial review of agency action are simply not analogous to the LHWCA because under them true adversity exists between the claimant of a *government* benefit and the government agency which seeks to withhold it. Thus, when review of agency action is sought by an unsuccessful applicant for a license before the FCC, *see* 47 U.S.C. § 402, or an unsuccessful applicant for a rate increase before the FPC, *see* 16 U.S.C. § 825*l*(b), or an unsuccessful claimant for Supplemental Security Income before the Secretary of H.E.W., *see* 42 U.S.C. §§ 405(b), 1383(c)(3), it is clear that the agency must be named a respondent since *it* is the party against whom relief is sought; the court could not grant an effective remedy without its presence. (Conversely, these agencies would never have reason to seek review of their own decisions.) In LHWCA cases, on the other hand, it is the private employer or insurance carrier which will have to pay any award which may be entered.

The Labor-Management Relations Act is more nearly similar to the LHWCA, since under it, as under the LHWCA, disputes are adjudicated between antagonistic private parties. And the NLRB may be called upon to defend its decisions in court. *See* 29 U.S.C. § 160(f). However, the NLRB's status as a party in the courts of appeals derives from its enforcement powers. *See id.* ("Upon the filing of such petition [for review], the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section [granting the Board power to enforce its decisions in court], and shall have the same jurisdiction . . . to make and enter a decree enforcing, modifying . . . or setting aside in whole or in part the

does not on its face make the director a respondent to a petition to review under § 921(c).

Since the Act is not specific, it follows that, if the Director is to be a party, he must be a "person adversely affected or aggrieved by a final order of the Board" within the meaning of § 921(c). Whether he is or is not is a question closely akin to the issue of whether the "case or controversy" requirement of Article III of the Constitution has been met.

Generally, to be adversely affected or aggrieved under the statute or to present a case or controversy under the Constitution, one must have suffered "injury in fact, economic or otherwise." *See* K. Davis, Administrative Law (1970 Supp.) § 22.00-1 at 706; 3 *id.* § 22.02. Therefore, to be a party before this court, the Director must have some concrete stake in the outcome of the case.

The Director asserts he has the requisite stake because

> [h]e is directly affected in his official capacity by the correctness of the Board's decision involving the proper scope of coverage of the Act with whose administration he is charged as the designee of the Secretary of Labor.

The Secretary of Labor's administrative duties, delegated to the Director, *see* 20 C.F.R. § 701.202, are set out in 33

order of the Board"). Thus, like the FCC, the FPC, the Secretary of H.E.W. and other agencies, the NLRB is an adverse party in court because adjudication is being sought of *its* right to grant relief in behalf of the prevailing party before it. The Director, Office of Workmen's Compensation Programs has no enforcement powers comparable to those of the NLRB.

Moreover, it is not the decision of the Director which is called into question by a petition for review under 33 U.S.C. § 921(c), but that of the Benefits Review Board. Thus, the Director does not possess even a concrete interest in defending his *own* decision in court, as does, for example, a district judge against whom a writ of mandamus is sought. As we noted in the majority panel opinion, the Benefits Review Board has specifically asked that it *not* be denominated a party respondent in these proceedings. To that request, we acceded.

U.S.C. § 939. Subsection (c)(1) is most arguably relevant to the Director's stake in the Board's decisions:

> The Secretary shall, upon request, provide persons covered by this chapter with information and assistance relating to the chapter's coverage and compensation and the procedures for obtaining such compensation and including assistance in processing a claim. The Secretary may, upon request, provide persons covered by this chapter with legal assistance in processing a claim. The Secretary shall also provide employees receiving compensation information on medical, manpower, and vocational rehabilitation services and assist such employees in obtaining the best such services available.

But we do not think that these duties provide the requisite stake. They do not confer upon the Director any specific interest in the proper administration of the Act.

In United States ex rel. Chapman v. F.P.C., 191 F.2d 796, 799-800 (4 Cir. 1951), *rev'd*, 345 U.S. 153 (1953), we held that the Secretary of the Interior lacked standing to challenge an order granting a license to a private company to construct a dam. The Secretary claimed to be affected by the order because it was his statutory duty to market surplus electrical power from publicly constructed dams. The Supreme Court reversed without opinion on this point, upholding standing. 345 U.S. at 156. *See* 3 K. Davis, supra, § 22.15 at 280.

The Director asserts that *Chapman* supports his position before us, but we disagree. The Secretary of the Interior in *Chapman did* have some stake in the outcome: it would have been harder for him to market public power if another private dam was built. Alternatively, if the private project was disapproved, it would have been more likely that a

public dam would eventually have been built, in which case the Secretary would have had more power to market. Thus, regardless of whether the Secretary was faced with a surplus or a shortage of electrical power to market under his statutory authority, the FPC's decision would directly affect him in the performance of his marketing obligations. The Director in this case has no such specific interest. Therefore, we read *Chapman* to suggest that the Director does not have a stake in the outcome and cannot be a party.

The lack of a stake in the outcome on the part of the Director would appear to end our inquiry. The Director argues, however, that because he is a party to proceedings before the Board, 20 C.F.R. § 801.2(10), it would be anomalous if he were not a party before this court. There are several answers to this argument. First, of course, that the Director is a party to proceedings before the Board does not alter the fact that he has no direct stake in the outcome of the case, is not a person aggrieved by Board action and is thus without a case or controversy to assert. Second, the fact that one is permitted to be a party to administrative proceedings does not require that one be entitled to initiate judicial review of those proceedings:[5] in the former case,

[5] While the Director here seeks to be named a *respondent* to a petition for review, a holding that he is a "person aggrieved" whose presence insures proper adversity would necessarily lead to the conclusion that he is entitled to petition for review of a decision of the Benefits Review Board of which he disapproves: if the Director has an interest in sustaining a Board decision with which he agrees, then he also has an interest in overturning a decision with which he disagrees. We would not readily subject the LHWCA to a construction under which the official charged with administering the Act could invoke the aid of the federal courts to reverse the decision of the board responsible for adjudicating claims under the Act. The unfairness of such a result is manifest if one contemplates the possibility that in some future case the Director, in furtherance of his asserted interest in determining "the proper scope of coverage of the Act," might seek to reverse an award to a claimant on the ground that the Board had been too generous.

the participant may perform a useful role by calling to the administrative agency's attention considerations it could not on its own initiative, much in the way that an intervenor would in this court; in the latter situation, however, the hopeful party is seeking to initiate a new level of proceedings because of dissatisfaction with the result below. *See* 3 K. Davis, supra, § 22.08 at 242.

Finally, it would appear even from the regulations implementing the Act that the Director is not *automatically* to be a party in this court, even though he is automatically a party before the Board. In 20 C.F.R. § 801.2(10), "party" is defined as follows: "the Secretary or his designee *and* any person or business entity aggrieved or directly affected by the decision or order from which an appeal to the Board is taken." (Emphasis added.) However, 20 C.F.R. § 802.410 provides: "any *party* adversely affected or aggrieved by such decision [of the Board] may take an appeal to the U.S. Court of Appeals . . . ." (Emphasis added.) Thus, the Secretary is a "party" before the Board even if he is not "aggrieved"; but to be entitled to participate in court proceedings, the Secretary, although a "party" below, must, like any other "party," be adversely affected.

In summary, we stand firm in our conclusion that the Director is not automatically a respondent in a review proceeding under § 921(c).

In our earlier opinion, we added that we did not decide that "a court of appeals may not, in a proper case, permit intervention by others [including the Director] who have an interest at stake . . . ." We elaborate on that comment: The Director unquestionably has a right to seek to intervene under Rule 24(b), Fed. R. Civ. P.,[6] and an application

[6] The Federal Rules of Civil Procedure principally govern procedure in the United States district courts in suits of a civil nature, Rule 1, but Rule 81(c) makes them applicable also to review proceedings under the Act to the extent that the Act does not prescribe procedure.

will ordinarily be granted. See 3B J. Moore, Federal Practice ¶ 24.10[5]; 7A C. Wright & A. Miller, Federal Practice and Procedure § 1912. The Director has not, however, sought intervention in these cases. We assume that he has not done so because he does not wish to render moot his assertion that such a request on his part is unnecessary. Having decided that such a request is necessary, we will still consider such a request on his part should he be advised to make it.

Nos. 75-1051 and 75-1088—REVERSED.
Nos. 75-1075 and 75-1196—AFFIRMED.
Each Party to Pay His Own Costs.

Butzner, Circuit Judge, dissenting:

I

I believe that the Director, Office of Workmen's Compensation Programs, should be recognized as a party to these proceedings. This issue raises a simple question of statutory construction. In 33 U.S.C. § 939(c), Congress authorized the Secretary of Labor to assist claimants and to provide them legal assistance. This statute must be read along with 33 U.S.C. § 921(a), which provides that attorneys appointed by the Secretary shall represent him before the courts of appeals. The Secretary has properly delegated his responsibilities to the Director.

Regulations under the Act establish the Director as a party before the Benefits Review Board, 20 C.F.R. § 801.3 (10). His stake in the proceedings arises out of the duty imposed by 33 U.S.C. § 939(c)(1) to assist claimants. Thus, the Director, like any other party before the Board, is aggrieved within the meaning of 33 U.S.C. § 921(c) by an adverse decision of the Board. If he deems the decision

erroneous, his statutory duty to assist the claimant includes seeking review. If the decision favors the claimant, the statute authorizes the Director to support the award on review.

In sum, the Act expressly places on the Secretary or his designee, the Director—not upon the courts of appeals—the responsibility of determining when the Director should participate in the review of the Board's orders. Congress did not condition the Director's appearance in our court on our granting or withholding pemission.

The difference between the Director's status as a permissive intervenor and as a party is more than a technical nicety. The majority rule, as I see it, will create roadblocks to filing petitions for review and certiorari, and it will provoke extended litigation over whether the Director's position in a given case satisfies the requirements of Rule 24(b). Other circuits have wisely recognized the Director's status as a party. *See, e.g.*, Pittston Stevedoring Corp. v. Dellaventura, No. 76-4042 (2d Cir. March 16, 1976); McCord v. Cephas, No. 74-1948 (D.C. Cir. March 25, 1975). I am not persuaded that we should differ from their sound conclusions.

II

I fully agree with Judge Craven that the point of rest theory espoused by the majority of the court is a judicial gloss on the 1972 Amendments of the Longshoremen's and Harbor Workers' Compensation Act, which is warranted by neither the Act nor its legislative history. *See* I.T.O. Corp. v. Benefits Review Board, 529 F.2d 1080, 1089 (4th Cir. 1975) (Craven, J., dissenting). I add only these brief observations. A careful study of the majority opinion filed when this case was heard by a panel, *I.T.O. Corp.*, 529

F.2d at 1081, discloses that the effect of the point of rest theory is to deprive longshoremen of coverage under the Act when they are injured while stuffing or stripping a ship's containers at a marine terminal. The slight modification of the theory in the majority's per curiam opinion alleviates some, but not all, of its harsh results. It does so, however, at the expense of adding the factor of lapse of time to the vague concept of place for determining the point of rest. Rational, uniform application of the court's theory to the myriad circumstances in which injuries occur will be most difficult.

Judge Craven initially voted with the majority to deny the Director standing as a party to these proceedings. On en banc reconsideration, he is now persuaded otherwise, and concurs in Judge Butzner's opinion.

OPINION AND JUDGMENT OF A PANEL OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 75-1051

I.T.O. Corporation of Baltimore, Employer, and
Liberty Mutual Insurance Company, Carrier,
Petitioners,

v.

Benefits Review Board, U.S. Department of Labor,
Respondent,

William T. Adkins,
Respondent,

International Longshoreman's Association,
Amicus Curiae.

No. 75-1075

Maritime Terminals, Inc., and
Aetna Casualty and Surety Co.,
Petitioners,

v.

Secretary of Labor, and Donald D. Brown,
Respondents.

No. 75-1196

Maritime Terminals, Inc., and
Aetna Casualty and Surety Co.,
Petitioners,

v.

Vernie Lee Harris, and
United States Department of Labor,
Respondents.

No. 75-1088

National Association of Stevedores, et al.,
Petitioners,

v.

Benefits Review Board, U.S. Dept. of Labor,
Respondent,

William T. Adkins,
Respondent.

On Petition for Review of the Order of the Benefits Review Board.

Argued August 21, 1975. Decided December 22, 1975.

Before Haynsworth, Chief Judge, Winter and Craven, Circuit Judges.

* * *

Winter, Circuit Judge:

These appeals present the question of first impression of the extent to which the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 *et seq.*, extend benefits under the Act to persons engaged in necessary steps in the overall process of loading and unloading a vessel, but who, prior to the Amendments, could claim benefits for accidental injury or death only under state law. The Administrative Law Judge and the Benefits Review Board of the Department of Labor held that benefits under the Act had been extended to all persons handling cargo or performing related functions in the terminal area. We disagree, and reverse each of the three awards in these cases.

We conclude that the Act's benefits extend only to those persons, including checkers, who unload cargo from the ship to the first point of rest at the terminal or load cargo from the last point of rest at the terminal to the ship. While the 1972 Amendments do extend the benefits of the Act to some persons who were not previously eligible, coverage is limited by the concept of "maritime employment," and not every person handling cargo between ship and point of discharge to the consignee or point of receipt from the shipper is engaged in "maritime employment." On the facts we conclude that these three claimants were not. The 1972 extension of coverage was intended only to remove inequities and anomalies arising when a person otherwise engaged in "maritime employment" was injured on land.

A subsidiary question in Nos. 75-1051 and 75-1088 is raised by the motion of Benefits Review Board, Department of Labor, to substitute the Director, Office of Workers' Compensation Programs, Department of Labor, as to which is the proper respondent in a petition to review under 33

U.S.C. § 921(c). We think that neither is a proper party to the proceedings. We therefore deny the Board's motion to substitute, and dismiss the Board. We will treat the Director as *amicus curiae*.

I.

The awards presented for review were made to William Adkins, who was injured at Dundalk Marine Terminal in the Port of Baltimore, and to Donald D. Brown and Vernie Lee Harris, both of whom were injured at Maritime Terminals, Inc., the lessee and operator of Norfolk International Terminals in Norfolk, Virginia.

A. Adkins was a forklift operator and he sustained his injuries while he was moving a load of brass tubing from its storage place in a warehouse to a waiting delivery truck which would transport it to its ultimate destination. He performed a function in the overall unloading of the ship and discharge of its cargo from the terminal. The tubing had arrived at the terminal some seven days earlier aboard the SS American Legend, packed in a container. The container had been removed from the vessel and immediately taken from the ship's side to a marshaling area one-half to three-quarters of a mile away where it was stored with other containers. The ship sailed on the same day that it had docked. Three days later the container was moved 1,000-1,200 feet to a warehouse or transit shed, known as Shed 11, where the container was "stripped," *i.e.*, unloaded, and the brass tubing stored to await transportation to its destination. The delivery truck did not arrive until four days later, and shortly thereafter Adkins was injured loading the tubing into it with his forklift.

Shed 11 was 685 feet from the water's edge. It was not

connected geographically or functionally with the ship's berthing area, and ships were neither loaded nor unloaded from it.

B. Brown suffered carbon monoxide poisoning while he was engaged as a forklift operator at Marine Terminals. He performed a function in the overall loading of cargo on board a ship. He operated his forklift in a warehouse where cotton piece goods and barrels of chemicals had been deposited after delivery by truck or rail. His job was to move loads of these items from their storage place to a container which was then "stuffed," *i.e.*, loaded with the items he had moved.

After a container was fully loaded, it was sealed and moved by another vehicle, called a "hustler," to a marshaling area adjacent to the pier. The container would then be lifted from the "hustler" and placed in a stack with other containers to await the arrival of a ship. When the ship arrived the container would be loaded aboard. Brown took no part in these latter operations. They were performed by persons other than employees of Marine Terminals. At no time was Brown required to board a ship. The warehouse in which he worked was 850 feet from the water's edge.

C. Harris was injured when the brakes failed on a "hustler" which he was operating and it collided with a container. He, too, performed a function in the overall loading of a ship; his was the next after that performed by Brown. Harris moved the containers from the long-term container storage area to the container marshaling area adjacent to the pier. He had just deposited a container at the container marshaling area and was on the return trip to the long-term container storage area to pick up another container when his brakes failed. No ship was present at the pier at the time, and the containers in the marshaling

area were not scheduled to be loaded aboard a vessel until later in the day when one was scheduled to arrive.

II.

The awards were made under § 3(a) of the Act, 33 U.S.C. § 903(a) (1975 Supp.), which, in pertinent part and with italics to show the Amendments made in 1972, provides:

> Compensation shall be payable . . . in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (*including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel*) . . . .

The meaning of the words "employee" and "employer" is found in § 2(3) and (4), 33 U.S.C. § 902(3) and (4) (1975 Supp.), and these subsections, with italics to show the 1972 Amendments, provide:

> (3) The term "employee" *means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker,* but such term does not include a master or member of a crew of any vessel, *or* any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.
>
> (4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters

> of the United States (*including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel*).

Prior to 1972,[1] benefits were payable under the Act to any person (except a master or member of a crew or a person loading or unloading a vessel under eighteen tons net) if he was injured "upon the navigable waters of the United States (including any dry dock) and if recovery for the disability through workmen's compensation proceedings [could] not validly be provided by State law," with certain exceptions not material here. The pre-1972 Act thus did not distinguish among employees depending on the function they performed. Instead, the geographical location of the injury was all-important, with coverage stopping at the water's edge.

Sections 2 and 3 of the present Act establishes a dual test for coverage. The situs requirement has been retained, with the definition of "navigable waters" expanded to include certain specified land areas. In addition, a new "status" test has been added: the person injured ("employee") must have been engaged in "maritime employment," a concept

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[1] The 1972 Amendments to §§ 2 and 3 were only part of a broad overhaul of the Act. Other amendments substantially increased the maximum and minimum benefits which could be awarded; accomplished a legislative overruling of Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946), which permitted a longshoreman to recover damages from a ship resulting from the ship's unseaworthiness; and effected a legislative overruling of Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp., 350 U.S. 124 (1956), under which a ship could recoup from a longshoreman's employer the damages it was required to pay the longshoreman for injuries he suffered due to the unseaworthiness of the ship, on the theory that the employer breached an expressed or implied warranty of workmanlike performance.

which is nowhere defined but which includes "longshoring operations." The net effect of the 1972 Amendments was therefore to *broaden* the area in which an injury would be covered, and *narrow* the class of persons eligible according to job function.

Section 4 of the amended Act, 33 U.S.C. § 904, limits liability for compensation to an "employer" as defined in § 2(4), 33 U.S.C. § 902(4). The definition is so drafted that it appears that an employer will always be liable for his "employees'" covered injuries. It therefore does not prescribe another, additional test for coverage.

III.

We have no doubt that each of the claimants satisfies the situs test of the post-1972 Act. As a minimum, they were injured at a terminal, adjoining navigable waters, used in the overall process of loading and unloading a vessel. The difficult issue is whether they also satisfy the status test—were they engaged in "maritime employment," or may they be deemed longshoreman or persons engaged in longshoring operations within the meaning of the Act?

The meaning of the terms "maritime employment," "lonshoreman" and "persons engaged in longshoring operations" is not so fixed and certain that the Act alone provides the answer. "Maritime employment" is a phrase that embodies the concept of a direct relation to a vessel's navigation and commerce. Atlantic Transport Co. v. Imbrovek, 234 U.S. 52, 61 (1914) ("The libellant was injured on a ship, lying in navigable waters, and while he was engaged in the performance of a maritime service. We entertain no doubt that the service in loading and stowing a ship's cargo is of this character.") Ordinarily the question of whether a person was engaged in "maritime employment" is to be determined

as of "the time of the accident." Parker v. Motor Boat Sales, 314 U.S. 244, 247 (1941). *See* Pennsylvania R.R. v. O'Rourke, 344 U S. 334, 340 (1953). But while the cases establish that loading and unloading a vessel is maritime employment, they all limited recovery to injuries sustained on the seaward side of the water's edge because such was the limit of admiralty jurisdiction. See discussion and collection of authorities in Victory Carriers, Inc. v. Law, 404 U.S. 202, 204-07 (1971). Thus, the cases shed no real light on how far shoreward the maritime nature of loading and unloading extends, particularly where, as here, the shore-based aspects of the overall loading and unloading operations have been split into numerous functions and assigned to different employees.

"Longshoreman" and "longshoring operations" are words of no greater exactness of meaning. It is true that in Intercontinental Container Transport Corp. v. New York Shipping Ass'n, 426 F.2d 884 (2 Cir. 1970), it was said that "[h]istorically the work of longshoremen included the preparation of cargo for shipment by making up, for example, drafts and pallets and, in connection with unloading cargo, the breaking up of drafts and pallets, sorting the cargo according to its consignees and delivering it to the trucks or other carriers." *Id.* at 886. At the same time, however, the opinion recognized that "[t]he work of stevedores is the loading and unloading of ships." *Id.* at 889. The case dealt with a freight forwarder's complaint that an agreement between a longshoremen's union and a steamship carriers' association, which foreclosed the forwarder's employees from stuffing and stripping containers, constituted a restraint of trade. The decision is hardly determinative of just what functions a longshoreman performs and at what point in the unloading and loading processes, if any, he ceases to perform longshoring operations.

Perhaps more significant is the fact that the Secretary of Labor, in promulgating regulations to foster safe conditions in the longshoring industry, defined "longshoring operations" as to "loading, unloading, moving, or handling of, cargo, ship's stores, gear, etc., *into, in, on, or out of any vessel* on the navigable waters of the United States." 29 C.F.R. § 1918.3(i)(1974) (emphasis added). *See* 29 C.F.R. § 1910.16(b)(1)(1974). Of course these regulations were adopted prior to enactment of the 1972 Amendments and it may well be, as the government argues, that they will ultimately be redrafted when the scope of the 1972 Amendments has been judicially determined. They are significant evidence, however, of the meaning attached to the words at the time that Congress was considering the 1972 Amendments.

Because we conclude that the terms "maritime employment," "longshoreman" and "longshoring operations" are not such words of art that we would be justified in deciding the case without resort to the legislative history of the 1972 Amendments and full consideration of the context in which they were enacted, we turn to these secondary sources. *See* United States v. Oregon, 366 U.S. 643, 648 (1961).

IV.

The Act was initially adopted in 1927 as a congressional response to a series of holdings that the states were without power to afford a workmen's compensation remedy to workers aboard vessels, and that Congress lacked the authority to validate the application of state remedies to such workers, Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917); Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920); Washington v. W. C. Dawson & Co., 264 U.S. 219 (1924). The rationale of those cases was that under the Constitution

only Congress had authority over longshoremen injured on the seaward side of the pier. Congress responded to the broad suggestion in *Dawson,* 264 U.S. at 227, that Congress enact "general provisions for compensating injured [maritime] employees . . ." by enacting the 1927 Act.[2]

Continuing problems in the application of the Act arose from the fact that it limited recovery to injuries occurring on navigable waters, *i.e.,* it looked to the situs of the injury rather than to the maritime status of the injured longshoreman. *See* Nacirema Operating Co. v. Johnson, 396 U.S. 212, 215-16 (1969). Specifically, *Nacirema* held that the Extension of Admiralty Jurisdiction Act, which extended admiralty jurisdiction to certain land structures, did not operate to modify the basic requirement of the Compensation Act that benefits be afforded solely on account of death or injuries not reachable by state workmen's compensation

[2] It was not until the decision in Calbeck v. Travelers Ins. Co., 370 U.S. 114 (1962), that the availability of the Act's remedies for all injuries to employees on navigable waters was firmly established. Pre-1927 cases had tried to afford some protection to injured maritime employees by whittling down the *Jensen* doctrine with the so-called "maritime but local" exception, which allowed the application of state law to admittedly maritime accidents in areas of "local concern." *See, e.g.,* Grand Smith-Porter Ship Co. v. Rhode, 257 U.S. 469 (1922); Western Fuel Co. v. Garcia, 257 U.S. 233 (1921). After the passage of the 1927 Act, it was unclear whether these decisions persisted as a limit on the *federal* law's scope. *Calbeck* made it plain that they did not. What did survive was a sphere of concurrent state and federal jurisdiction, the so-called "twilight zone." This was the area where it was impossible to predict, before litigation, whether the employee's activities were so local that a state workmen's compensation act might apply. *See, e.g.,* Hahn v. Ross Island Sand & Gravel Co., 358 U.S. 272 (1959); Davis v. Department of Labor and Industries, 317 U.S. 249 (1942).

For a description of the genesis of the Act and the principal judicial constructions of it, see dissenting opinion of Haynsworth, C.J., in Marine Stevedoring Corp. v. Oosting, 398 F.2d 900, 910-11 (4 Cir. 1968), rev'd sub nom. Nacirema Operating Co. v. Johnson, 396 U.S. 212 (1969).

statutes, *i.e.*, those beyond the pier on the seaward side. Such a holding necessarily resulted in anomalies, *e.g.*, benefits were denied three longshoremen in *Nacirema* who were injured or killed when cargo hoisted by the ship's crane swung back and knocked them to the pier or crushed them against the side of a railroad car, while the widow of a fourth longshoreman whose decedent had a similar accident but was knocked into the water and drowned was able to recover. (Her case was not taken to the Supreme Court.) *See* Marine Stevedoring Corporation v. Oosting, 398 F.2d 900 (4 Cir. 1968). See also the dissenting opinion of Chief Judge Haynsworth in *Oosting* commenting on incongruities in application of the Act, 398 F.2d at 911, and our opinion in Snydor v. Villain & Fassio et Compania Int. DiGenova, 459 F.2d 365 (4 Cir. 1972), setting forth a number of ship-related but uncompensable injuries. Indeed, the Court in *Nacirema* apparently anticipated incongruous results stemming from its holding because it said:

> There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. . . . [C]onstruing the Longshormen's Act to coincide with the limits of admiralty jurisdiction—whatever they may be and however they may change—simply replaces one line with another whose uncertain contours can only perpetuate on the landward side of the Jensen line, the same confusion that previously existed on the seaward side. While we have no doubt that Congress had the power to choose either of these paths in defining the coverage of its compensation remedy, the plain fact is that it chose instead the line in Jensen separating water from land at the edge of the pier. The invitation to move that line landward must be addressed to Congress, not to this Court. 396 U.S. at 223-24.

See also Victory Carriers v. Law, 404 U.S. 202, 216 (1971).

To the extent pertinent here, the 1972 Amendments were a direct response to the invitation in *Nacirema*. Given that Congress has the power to extend admiralty jurisdiction to the landward side of the *Jensen* line, we think that the most informative source on how far the line was extended is contained in the virtually identical House and Senate Reports, dealing with "Extension of Coverage to Shoreside Areas." *See* S. Rep. No. 92-1125, 92 Cong., 2d Sess. (1972); H.R. Rep. No. 92-1441, 92 Cong., 2d Sess. (1972). The pertinent portions of the House Report, 3 U.S. Code Cong. and Adm. News, 4698, 4707-08 (92d Cong., 2d Sess. (1972)), are set forth in the margin.[3]

[3] The present Act, insofar as longshoremen and ship builders and repairmen are concerned, covers only injuries which occur "upon the navigable waters of the United States." Thus, coverage of the present Act stops at the water's edge; injuries occurring on land are covered by State Workmen's Compensation laws. The result is a disparity in benefits payable for death or disability for the same type of injury depending on which side of the water's edge and in which State the accident occurs.

* * *

It is apparent that if the Federal benefit structure embodied in Committee bill is enacted, there would be a substantial disparity in benefits payable to a permanently disabled longshoreman, depending on which side of the water's edge the accident occurred, if State laws are permitted to continue to apply to injuries occurring on land. It is also to be noted that with the advent of modern cargo-handling techniques, such as containerization and the use of LASH-type vessels, more of the longshoreman's work is performed on land than heretofore.

The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over water. Accordingly, the bill would amend the Act to provide coverage of longshoremen, harbor workers, ship repairmen, ship builders, shipbreakers, and other employees engaged in maritime employment (excluding masters and members of the crew of a vessel) if the injury occurred either upon the navigable waters of the United States or any adjoining pier, wharf, dry dock, terminal, building way,

The committee's report starts with frank recognition that the Act, prior to amendment, embodied the *Jensen* rule: "coverage of the present Act stops at the water's edge . . . . The result is a disparity in benefits . . . for the same type of injury depending on which side of the water's edge and in which State the accident occurs."

The committee also recognized that the disparity was worsening, not only because of unrealistic limits on benefits and exemptions from coverage contained in state workmen's compensation law, but also because modern technology in the industry required "more of a longshoreman's work . . . [to be] performed on land than heretofore." The committee then stated its belief that "the compensation payable to a

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marine railway, or other area adjoining such navigable waters customarily used by an employer in loading, unloading, repairing, or building a vessel.

The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity. To take a typical example, cargo, whether in break bulk or containerized form, is typically unloaded from the ship and immediately transported to a storage or holding area on the pier, wharf, or terminal adjoining navigable waters. The employees who perform this work would be covered under the bill for injuries sustained by them over the navigable waters or on the adjoining land area. The Committee does not intend to cover employees who are not engaged in loading, unloading, repairing, or building a vessel, just because they are injured in an area adjoining navigable waters used for such activity. Thus, employees whose responsibility is only to pick up stored cargo for further trans-shipment would not be covered, nor would purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo. However, checkers, for example, who are directly involved in the loading or unloading functions are covered by the new amendment. Likewise the Committee has no intention of extending coverage under the Act to individuals who are not employed by a person who is an employer, i.e., a person at least some of whose employees are engaged, in whole or in part in some form of maritime employment. Thus, an individual employed by a person none of whose employees work, in whole or in part, on navigable waters, is not covered even if injured on a pier adjoining navigable waters.

longshoreman . . . should not depend upon the fortuitous circumstance of whether the injury occurred on land or over water."

With its premise thus established, the committee made a series of significant statements. It said its intent was to provide benefits to employees *"who would otherwise be covered by this Act for part of their activity"* (emphasis added). As an example, it cited employees who unload cargo from a ship and transport it "immediately . . . to a storage or holding area on the pier, wharf, or terminal adjoining navigable waters." Such employees were to be compensated if they were injured over navigable waters or on the adjoining land area. Conversely, employees not engaged in loading or unloading a vessel were *not* to be covered even if they were injured on land in an area used for such activity.

The report specifically stated that "employees whose responsibility is only to pick up stored cargo for further transshipment would *not* be covered" (emphasis added), nor would purely clerical employees who do not participate in the loading and unloading of cargo. However, checkers *"directly* involved in the loading and unloading functions" (emphasis added) would be eligible for benefits.

We especially note that the committee report is explicit in delineating the portion of the overall loading and unloading process during which coverage attaches to longshoremen and persons engaged in longshoring operations: the Act applies between the ship and, in the case of unloading, the *first* storage or holding area on the pier, wharf, or terminal adjoining navigable waters. Although the instance of loading a ship was not discussed, we think that the same principle controls in reverse: coverage is afforded from the *last* storage or holding area on the pier, etc., to the ship.

We perceive the landward limit of coverage to be the "point of rest" as that term is generally understood in the industry, Norfolk Marine Terminal Association Tariff, No. 1-C at 18, Item 290, Respondent's Exhibit 1, Harris v. Marine Terminals, Inc., No. 74-LHCA-108 (Aug. 15, 1974), and defined by the Federal Maritime Commission in its regulations governing terminal operators. 46 C.F.R. § 533.6(c) (1974). *See also* American President Lines, Ltd. v. Federal Maritime Bd., 317 F.2d 887, 888 (D.C. Cir. 1962); DiPaola v. International Terminal Operating Co., 311 F.S. 685, 687 (S.D. N.Y. 1970).

Applying these principles to the three cases at bar, we think that in Adkins' case the container marshaling area was the first point of rest in the unloading process, and that in Brown's and Harris' cases the marshaling area adjacent to the pier was the last point of rest in the loading process. Since Adkins was injured landward of the first point of rest[4] and Brown and Harris were injured landward of the last point of rest, we think it follows that none was afforded coverage under the Act, as amended.

It might be argued that the construction we place on the statute is inconsistent with the congressional committees' statements that the 1972 Amendments were intended to make eligible for benefits "employees who would otherwise be covered by this Act [before amendment] *for part of their activity*" (emphasis added). It may well be that there are no longshoremen engaged in moving cargo between ship

[4] We are aware that Adkins testified that in the past, and sometimes over weekends, he was employed in various capacities "loading and unloading ships" and "on a ship." We think that the record is clear, however, that Adkins was not so employed at the time that he was injured; rather his duties were confined to operating a forklift in Shed 11. As we have indicated in the text, the status of his employment is to be determined as of the time of the accident—not by what his previous duties may have been or by what his duties are when he accepts sporadic overtime assignments.

and point of rest who never cross the water's edge. Such workers would not have been covered by the old Act, but will be eligible for benefits under our interpretation of the Amendments.

Our answer is that we have done no more than the committees. Although the committees said that coverage was being limited to employees who would be otherwise covered "for part of their activity," the committees clearly recognized that with modern technology "more of the longshoreman's work is performed on land" and they unequivocally stated that they intended to cover employees who unload the ship and immediately transport the cargo to a storage or holding area (point of rest) on the pier, wharf or terminal, excluding coverage only to those who pick up stored cargo for further transshipment. In view of the latter statements and the liberality of construction to be afforded remedial legislation of this type, we do not feel constrained to give an overly limiting interpretation to the phrase "employees who would otherwise be covered for part of their activity."

In summary, when we examine the amendments in the context of the Act prior to amendment, the case law construing the Act and commenting on the power of Congress to legislate in this area, and the language of the committee reports, we reject the government's assertion that all persons, excluding clerical employees other than checkers, who play any part in the overall loading and unloading process are covered by the Act as amended. We think that, with respect to longshoremen or other persons engaged in longshoring operations, the Amendments extend only to those employees engaged in loading and unloading activities between the ship and the first (last) point of rest, including checkers "directly involved in [such] loading or unloading functions."

V.

In the posture in which Nos. 75-1051 and 75-1088 came to our court, the Benefits Review Board, Department of Labor, was named as respondent in a petition under § 21(c) of the Act, 33 U.S.C. § 921(c) (1975 Supp.), to review the Board's order awarding benefits. The claimant, William T. Adkins, was also named as a respondent. In due course the Board moved that it be dismissed from the proceedings and that there be substituted as a respondent the Director, Office of Workers' Compensation Programs. The claimant did not oppose the motion, but petitioners, I.T.O. Corporation of Baltimore and Liberty Mutual Insurance Company, and the intervenors, National Association of Stevedores, et al., did oppose it. We deferred decision on the motion until decision of the cases.

In agreement with the holding and reasoning of McCord v. Benefits Review Bd., 514 F.2d 198 (D.C. Cir. 1975), we do not think that the benefits Review Board is a respondent to a petition to review its order under either 33 U.S.C. § 921(c) or Rule 15(a,) F.R.A.P. The same result has been reached by the Ninth Circuit in two unreported cases. Westfall v. Benefits Review Board (Nos. 73-2578 and 73-2579, 9 Cir. Dec. 5, 1973); Walker v. Benefits Review Board (Nos. 74-1340 and 74-1494, 9 Cir. Aug. 9, 1974). As the District of Columbia Circuit held, "there is sufficient adversity between [employer and employee] to insure proper litigation without participation by the Board," 514 F.2d at 200, and on this reasoning we do not think that the Director, Office of Workers' Compensation Programs is a proper respondent either. We dismiss the Board and deny the substitution. This, of course, is not to say that either the Board or a court of appeals may not, in a proper case, permit intervention by others who have an interest at stake and that they may not

appear as petitioners or respondents as their interests appear.

Counsel for the government have performed a valuable service in these cases by supplementing the argument of the claimants as to the meaning to be afforded the 1972 Amendments. We treat their participation, however, as *amicus curiae*.

In Nos. 75-1075 and 75-1196, no point is made of who are named as respondents. We make none, confident in the belief that in this circuit future litigation will be conducted in accordance with what we have stated.

Reversed; Benefits Review Board Dismissed In Nos. 75-1051 and 75-1088

Craven, Circuit Judge, dissenting:

William T. Adkins, Donald D. Brown, and Vernie Lee Harris will, I think, be surprised to learn that they are not longshoremen, and astonished to discover that they are not engaged in maritime employment of any kind. If they are not, as my brothers hold, then the Congress has labored prodigiously only to have accomplished nothing at all in its effort to simplify the problems of maritime workers' compensation. While these cases are the first to reach a court of appeals under the 1972 amendments to the Act,[1] they will surely not be the last. Henceforth, injured employees

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[1] *See generally* 1A *Benedict on Admiralty* §§ 15-30 (7th ed. 1973, Supp. October 1975); Gorman, *The Longshoremen's and Harbor Workers' Compensation Act—After the 1972 Amendments*, 6 J. Maritime L. & Commerce 1 (1974); Gorman. *The Longshoremen's Act After the 1972 Amendments*, 20 Practical Lawyer 13 (1974); Comment, *Broadened Coverage Under the LHWCA*, 33 La. L. Rev. 683 (1973); Comment, *The Longshoremen's and Harbor Worker's Compensation Act Amendments of 1972: An End to Circular Liability and Seaworthiness in Return for Modern Benefits*, 27 U. Miami L. Rev. 94

and their counsel must comb the waterfronts of this circuit, probing hopelessly, like Diogenes with his lantern, for that elusive "point of rest" upon which coverage depends. I decline to make that search, and would hold that these plaintiffs and others like them are covered by the Act as amended.

I.

In general I agree with Part II of the majority opinion. The gist of the amended Act is that for a person to be eligible for compensation he must have been injured on the "navigable waters" of the United States (as redefined by the Act) and that at the time of his injury he must have been an "employee."

I agree with my brothers that Adkins, Brown, and Harris were injured while upon the "navigable waters" of the United States as that term has been expanded by the 1972 amendments.

Since plaintiffs satisfy the "situs" test, the only remaining inquiry is whether or not they had the proper "status," *i.e.*, were they "employees" within the meaning of § 902(3) of the amended Act. If they were, then both requirements for coverage are met, and they are entitled to recover.

II.

To be "employees" within the meaning of the Act, plaintiffs must fall within § 902(3), which provides:

(1972); Note, *Maritime Jurisdiction and Longshoremen's Remedies,* 1973 Wash. U.L.Q. 649 (1973); Note, *Admiralty—the 1972 Amendments to § 903 of the Longshoremen's and Harbor Workers' Act: Has the "Twilight Zone" Moved Onto the Pier?,* 4 Rutgers-Camden L.J. 404 (1973); Note, *Admiralty—Maritime Personal Injury and Death—Longshoremen's and Harbor Workers' Act Amendments of 1972,* 47 Tulane L. Rev. 1151 (1973).

> (3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, ...

The critical term is "maritime employment."[2] That term is used by the Congress generically—a broad term that is said to include the narrower terms: "longshoreman," "longshoring operations," and "harborworker." The latter are lesser included examples of "maritime employment." Thus the terms "maritime employment" and "longshoring" cannot be synonyms. The Act on its face clearly suggests that there are jobs which may not constitute longshoring operations but which are "maritime employment."[3]

[2] On the basis that there can be nothing more maritime than the sea, every employment on the sea or other *navigable waters* should be considered as maritime employment. . . . it would be well to adopt a criterion which takes into account the undoubted jurisdiction of admiralty in matters of all injuries on *navigable waters.*

1A *Benedict on Admiralty, supra,* note 1 at § 17 (emphasis added). In this context, note the greatly expanded definition of "navigable waters" contained in the 1972 amendments as set forth on page 8 of the majority opinion.

[3] There is, apparently, some confusion about this. Appellants consistently take the position that an employee can be covered only if he engages in traditional *longshoring* operations. (". . . Congress in extending the coverage of the Act shoreward was concerned only with those workers commonly known as longshoremen . . . . Clearly Congress did not intend that the Act as amended would apply to workers who during the course of their duties are not required to go on board ship . . . ." Brief for Petitioners Maritime Terminals, Inc. and Aetna Casualty and Surety Co. at 19). *See, e.g.,* Vickery, *Some Impacts of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act,* XLI Ins. Counsel J. 63, 67 (1974) ("The employee must be engaged in 'longshoring operations' . . . ."). While for purposes of this appeal I do not find it necessary to go beyond

Because of their professed inability to discern the meaning of "maritime employment" and "longshoring operations," the majority feels driven to legislative history.[4] With all deference, I think they give up too easily. The Congress is entitled to have its words accorded meaning if it is at all possible to do so, and I think it is. There are guidelines and aids for statutory construction and interpretation which, it seems to me, the majority overlooks in its rush to the committee reports.

A. In the first place, the 1972 amendments to the Act are of a remedial nature, designed to correct inequities

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the question of whether these three plaintiffs were engaged as longshoremen, I do point out that to equate maritime employment with longshoring operations denies meaning to the broader term chosen by the Congress.

Indeed, it seems correct to hold that even the term "harborworker" is broader and more generic than "longshoremen," and that longshoremen are but a category of harborworkers.

> First in the catalogue of harbor workers is the longshoreman. The longshoreman, as the name implies, is a shoreside worker whose principle activity is the loading and unloading of ship's cargo.
>
> . . . .
>
> Outside of cargo work in the holds, longshoremen are engaged in various tasks in connection with voyage preparation or termination. The work may consist of carrying ship's stores or passenger's baggage aboard ship. *Or the work may be performed entirely on the pier in the handling of mechanical equipment, or the storing, moving, or loading of goods on the dock.*

M. Norris, 1 *The Law of Maritime Injuries* § 3 (3d ed. 1975). (Emphasis added.)

[4] Because we conclude that the terms "maritime employment," "longshoreman" and "longshoring operations" are not such words of art that we would be justified in deciding the case without resort to the legislative history of the 1972 Amendments and full consideration of the context in which they were enacted, we turn to these secondary sources.

Maj. Op. 14.

worked by the Act prior to its amendments. With this in mind, we should be guided by a uinform line of cases holding that the Longshoremen's and Harborworkers' Compensation Act should be liberally construed in light of its remedial nature and humanitarian purposes. *See, e.g., Reed* v. *Steamship Yaka,* 373 U.S. 410 (1963), *rehearing denied,* 375 U.S. 872 (1963); *Voris* v. *Eikel,* 346 U.S. 328 (1953); *Pillsbury* v. *United Engineering Co.,* 342 U.S. 197 (1951); *Nalco Chemical Corp.* v. *Shea,* 419 F.2d 572 (5th Cir. 1969); *Calbeck* v. *A. D. Suderman Stevedoring Co.,* 290 F.2d 308 (5th Cir. 1961); *Old Dominion Stevedoring Corp.* v. *O'Hearne,* 218 F.2d 651 (4th Cir. 1955); *Blackwell Construction Co.* v. *Garrell,* 352 F.Supp. 192 (D.D.C. 1972); *Page Communications Engineers, Inc.* v. *Arrien,* 315 F.Supp. 569 (E.D. Pa. 1970); *Holland American Insurance Co.* v. *Rogers,* 313 F.Supp. 314 (N.D. Cal. 1970); *Gibson* v. *Hughes,* 192 F.Supp. 571 (S.D.N.Y. 1961). In addition, case law precedent admonishes us to construe doubts, including factual disputes such as are before us in these cases, in favor of the employee or his family. *Friend* v. *Britton,* 220 F.d 820 (D.C. Cir. 1955), *cert. denied,* 350 U.S. 836 (1955); *Hartford Accident & Indemnity Co.* v. *Cardillo,* 112 F.2d 11 (D.C. Cir. 1940), *cert. denied,* 310 U.S. 649 (1940); *Grain Handling Co.* v. *McManigal,* 23 F.Supp. 748 (W.D.N.Y. 1938), *aff'd* 102 F.2d 464, *cert. denied,* 308 U.S. 570 (1939). Finally, "a narrowly technical and impractical construction" of this chapter is not favored. *Luckenbach S.S. Co.* v. *Norton,* 106 F.2d 137, 138 (3d Cir. 1939). Inasmuch as the 1972 amendments were enacted to further the purposes of the original Act, these decisions are still authoritative indications of the proper approach to interpretation of the statute.

B. My brothers failed to give sufficient weight, if any, to a

presumption created by § 20 of the LHWCA, 33 U.S.C. § 920:

> § 920. *Presumptions*
>
> In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—
>
> (a) That the claim comes within the provisions of this chapter.

Clearly, the statute switches the ordinary burden of proof. I am unable to agree that defendants have sustained *their* burden by showing by substantial evidence that plaintiffs were *not* engaged in "maritime employment." At most, defendants have offered some evidence as to the nature of plaintiffs' employment. That it may be enough to create a doubt will not defeat the presumption. Doubts are to be resolved in favor of the employee. *Friend* v. *Britton, Bordilla, Grain Handling, supra; Beasley* v. *O'Hearne,* 250 F.Supp. 49 (S.D.W.Va. 1966).

C. Aside from canons of construction and the special statutory presumption, there is another honored approach enabling a court to accord specific meaning to the words of a statute: "A consistent and contemporaneous construction of a statute by the agency charged with its enforcement is entitled to great deference by the courts." *NLRB* v. *Boeing,* 412 U.S. 67, 75 (1973). This familiar rubric of statutory construction has often found expression in the decisions of this court. *E.g., Brennan* v. *Prince William Hospital,* 503 F.2d 282 (4th Cir. 1974) (Secretary of Labor's interpretation of statute entitled to "great deference"); *Tenneco, Inc.* v. *Public Service Commission,* 489 F.2d 334 (4th Cir. 1973) ("This administrative interpretation, while not controlling,

is entitled to great weight"); *Nacirema Operating Co.* v. *Oosting,* 456 F.2d 956 (4th Cir. 1972) ("we cannot lightly put aside the Agency's consistent interpretation of the [LHWCA]").

Section 939 of the Act entrusts the overall administration of the statute to the Secretary of Labor, and gives him the authority to "make such rules and regulations . . . as may be necessary . . . ." Amended § 921 provides for a new method of review of compensation orders whereby disputes as to coverage are first determined by an administrative law judge with right of appeal to the Benefits Review Board. The three Board members are appointed by the Secretary, and their decisions are reviewable by the court of appeals for the circuit where the injury occurred. 33 U.S.C. §§ 921 (b) & (c).

I have examined some 32 decisions of the Board rendered from its inception through October 1975 involving the shoreward extension of coverage under the 1972 amendments.[5]

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[5] Dellaventura v. Pittston Stevedoring Corp., 2 BRBS 340 (Oct. 9, 1975); Lopez v. Atlantic Container Lines, Ltd., 2 BRBS 265 (Sept. 9, 1975); Shoemaker v. Schiavone & Sons, Inc., 2 BRBS 257 (Sept. 5, 1975); Batista v. Atlantic Container Lines, Ltd., 2 BRBS 193 (Aug. 22, 1975); Spataro v. Pittston Stevedoring Corp., 2 BRBS 122 (Aug. 8, 1975); Stockman v. John T. Clark & Son of Boston, 2 BRBS 99 (July 30, 1975), *appeal docketed,* No. 75-1360 (1st Cir., filed Sept. 24, 1975); Johns v. Sea-Land Service, Inc., 2 BRBS 65 (July 11, 1975), *appeal docketed,* No. 75-2039 (3d Cir., filed Sept. 9, 1975); Mildenberger v. Cargill, Inc., 2 BRBS 51 (July 3, 1975); Watson v. John T. Clark & Son of Boston, Inc., 2 BRBS 47 (July 2, 1975); Richardson v. Great Lakes Storage and Contracting Co., 2 BRBS 31 (June 26, 1975), *appeal docketed,* No. 75-1786 (7th Cir., filed Aug. 25, 1975); Skipper v. Jacksonville Shipyards, Inc., 1 BRBS 533 (June 11, 1975), *appeal docketed,* No. 75-2833 (5th Cir., filed July 11, 1975); Cappelluti v. Sea-Land Service, Inc., 1 BRBS 527 (June 10, 1975), *appeal docketed,* No. 75-1801 (3d Cir., filed July 23, 1975); Vinciquerra v. Transocean Gateway Corp., 1 BRBS 523 (June 5, 1975); Powell v. Cargill, Inc., 1 BRBS 503 (May 30, 1975), *appeal docketed,* No. 75-2655 (9th Cir., filed July 28, 1975); O'Leary v. Southeast Stevedore Co., 1 BRBS 498 (May 30, 1975); Nulty v.

I think these decisions of the Board have established a consistent and reasonable interpretation of the Act which should be accorded "great weight" in this court. The Board is a quasi-judicial body within the agency charged with administration of the Act, and its function is to resolve disputes concerning coverage under the 1972 amendments. Not simply in these three cases, but time and again in an unbroken line of decisions, the Board has found that coverage exists in factually similar cases.

Repeatedly and consistently the Board has emphasized:

1. Outright rejection of the "point of rest" theory as a determinative factor in cases where coverage is disputed.

Halter Marine Fabricators, Inc., 1 BRBS 437 (May 2, 1975), *appeal docketed,* No. 75-2317 (5th Cir., filed May 20, 1975); Scalmato v. Northeast Marine Terminals, Co., 1 BRBS 461 (May 7, 1975); Mininni v. Pittston Stevedoring Corp., 1 BRBS 428 (May 1, 1975); DiSomma v. John W. McGrath Corp., 1 BRBS 433 (April 30, 1975); Ford v. P. C. Pfeiffer Co., Inc., 1 BRBS 367 (March 21, 1975), *appeal docketed,* No. 75-2289 (5th Cir., briefs filed Oct. 2, 1975); Mason v. Old Dominion Stevedoring Corp., 1 BRBS 357 (March 21, 1975); Ronan v. Maret School, Inc., 1 BRBS 348 (March 10, 1975), *appeal docketed,* No. 75-1445 (D.C. Cir., filed May 5, 1975); Kelley v. Handcor, Inc., 1 BRBS 319 (Feb. 28, 1975), *appeal docketed,* No. 75-1943 (9th Cir., filed April 28, 1975); Harris v. Maritime Terminals, Inc., 1 BRBS 301 (Feb. 3, 1975), *appeal docketed,* No. 75-1196 (4th Cir., oral argument Aug. 21, 1975); Perdue v. Jacksonville Shipyards, Inc., 1 BRBS 297 (Jan. 31, 1975), *appeal docketed,* No. 75-1659 (5th Cir., briefs filed June 4, 1975); Herron v. Brady-Hamilton Stevedoring Co., 1 BRBS 273 (Jan. 23, 1974), *appeal docketed,* No. 75-1538 (9th Cir., filed March 7, 1975); Ryan v. McKie Co., 1 BRBS 221 (Dec. 10, 1974); Brown v. Maritime Terminals, Inc., 1 BRBS 212 (Dec. 6, 1974), *appeal docketed,* No. 75-1075 (4th Cir., oral argument Aug. 21, 1975); Coppolino v. International Terminal Operating Co., Inc., 1 BRBS 205 (Dec. 2, 1974); Adkins v. I.T.O. Corporation of Baltimore, 1 BRBS 199 (Nov. 29, 1974), *appeal docketed,* No. 75-1051 and No. 75-1088 (4th Cir., oral argument Aug. 21, 1975); Gilmore v. Weyerhaeuser Co., 1 BRBS 180 (Nov. 12, 1974), *appeal docketed,* No. 74-3384 (9th Cir., oral argument Oct. 17, 1975); Avvento v. Hellenic Lines, Ltd., 1 BRBS 174 (Nov. 12, 1974).

2. Waterborne cargo remains in maritime commerce until such time as it is delivered to a trucker or other carrier to be taken from the terminal for further transshipment.

3. Cargo first enters maritime commerce when it is unloaded from a truck or other carrier and is handled by terminal employees working upon the "navigable waters" of the United States as defined in the Act.

4. The "loading and unloading" of ships is a continuous process involving many different employees working at various places within the terminal area and performing different tasks, but includes the handling of cargo during all times it is in maritime commerce.

5. It is sufficient to bring an employee within the scope of maritime employment that his duties at the time of injury involve handling cargo that is in maritime commerce.

6. The Act does not require that one actually be engaged in loading or unloading vessels to be an "employee" within the meaning of the Act.

I think we should hesitate to reject out of hand the expertise of the Board, and should instead accord its consistent interpretations of the statute "great deference."[8]

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[8] It has become clear that the position taken by the Board with respect to the scope of coverage under the amended Act reflects at least the initial position of the Secretary of Labor.

At 20 C.F.R. Part 710, the Department of Labor issued proposed guidelines for coverage under the LHWCA as amended. Section 710.4(b) states:

> Based on procedures normally utilized in the maritime industry, the loading process may include certain terminal activities which are incidental to the placement of cargo on the vessel. Conversely, the unloading process may also include certain terminal activities.

D. Before the 1972 amendments, § 921(b) of the LHWCA provided that review of compensation orders be had in the federal district courts. Although the scope of review was not defined by statute, the cases soon made clear that the district courts' inquiry was "strictly limited." *Mid-Gulf Stevedores, Inc.* v. *Neuman,* 333 F.Supp. 430, 431 (E.D.La. 1971), *reversed on other grounds,* 462 F.2d 185 (1972). *See also O'Keeffe* v. *Smith, Hinchman and Grylls Associates, Inc.,* 380 U.S. 359 (1965). Rulings by the district court could, of course, be appealed to the circuit court of appeals, but the scope of review there was also very narrow. *O'Loughlin* v. *Parker,* 163 F.2d 1011 (4th Cir. 1947) ("... it is ... undisputed that the compensation order below must be accepted by us if it has warrant in the record and a reasonable basis in law.").

The Benefits Review Board now performs essentially the same function as did the district courts prior to the Act's amendment. One significant difference, however, is that the scope of the Board's review is expressly defined by statute: "The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole." 33 U.S.C. § 921(b)(3). Section 921(c) provides that appeals from

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> Terminal activities to be included in coverage under the amended Act are employees engaged in loading or unloading break-bulk, containerized or Lash ships and lighters, or passenger ships. Activities which may be covered include employees engaged in *stuffing and stripping of containers,* employees working in and about marine railways, and *other employees engaged in processing water-borne cargo.*

(Emphasis added.)

These proposed guidelines are now under study by the Department, and thus do not as yet represent the official view of the Department of Labor. Yet they are useful in ascertaining the Department's initial interpretation of the statute in light of the consistent position taken by the Benefits Review Board.

the Board may be taken to the court of appeals for the circuit where the injury occurred. Significantly, the scope of review in the circuit courts is not defined, limited, or expanded by the 1972 amendments. I should think, therefore, that the same *narrow* review exercised by this court prior to 1972 remains the proper standard of review on appeal today. *Cardillo* v. *Liberty Mut. Ins. Co.,* 330 U.S. 469 (1947); *Wheatley* v. *Adler,* 407 F.2d 307 (D.C. Cir. 1968); *Wolff* v. *Britton,* 328 F.2d 181 (D.C. Cir. 1964); *O'Loughlin* v. *Parker, supra; Groom* v. *Cardillo,* 119 F.2d 697 (D.C. Cir. 1941).

My point is that the majority has failed to heed the restricted scope of review which the cases require of us. In all three cases here on appeal, the administrative law judge found coverage under the Act. In each case the Benefits Review Board, bound by its "substantial evidence" standard, affirmed. The majority opinion reverses, and this, I submit, is error. The record as a whole leaves no doubt in my mind that the decisions of the administrative law judge and the Benefits Review Board have "warrant in the record and a reasonable basis in law." *O'Loughlin* v. *Parker, supra.* I would, on this basis alone, vote to affirm.

III.

The basic disagreement between myself and my brothers is whether or not resort to the legislative history was necessary at all in these cases. My brothers feel that the language of the 1972 amendments is ambiguous, and they accordingly embark upon their search for congressional purpose and intent citing as authority *United States* v. *Oregon,* 366 U.S. 643, 648 (1961). I find no such ambiguity and note that the operative sentence in the *Oregon* case cited by my brethren reads as follows: "Having concluded that the pro-

visions of [the statute] are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act." 366 U.S. at 648. In taking such a position, I find reassurance in case law precedent in this circuit. *United States* v. *Deluxe Cleaners & Laundry, Inc.*, 511 F.2d 926 (4th Cir. 1975) (not permissible for court to assume that Congress by inadvertence failed to state something other than what is plainly set forth in statute); *United States* v. *Snider*, 502 F.2d 645 (4th Cir. 1974) ("Congress is presumed to have used words according to their ordinary meaning, unless a different signification is clearly indicated."); *United States* v. *Erdos*, 474 F.2d 157 (4th Cir. 1973) ("When the power of Congress is clear, and the language of exercise is broad, we perceive no duty to construe a statute narrowly."); *United States* v. *Hunter*, 459 F.2d 205 (4th Cir. 1972) ("Legislative intent is first to be gathered from the plain meaning of the words of the statute."); *Vroon* v. *Templin*, 278 F.2d 345 (4th Cir. 1960) ("The language of the statute is plain and is to be taken as written."); *Aiken Mills, Inc.* v. *United States*, 144 F.2d 23 (4th Cir. 1944) (". . . when the language of the statute is clear and needs no intetrpretation we may not look to the legislative history . . . ."). *Missel* v. *Overnight Motor Transp. Co.*, 126 F.2d 98 (4th Cir. 1942) ("Normally the best evidence of congressional purpose is the language of the law itself."); *Inland Waterways Corp.* v. *Atlantic Coastline R. Co.*, 112 F.2d 753 (4th Cir. 1940) ("Other parts of the same Act, or the debates in Congress, during the passage of the statute, can throw no light on that which is already made plain by the words used in the statute itself.").

It is the term "maritime employment" which troubles the majority. For reasons discussed *infra*, I do not find the term ambiguous, but would instead hold that it has an estab-

lished meaning sufficiently broad and inclusive to cover these three plaintiffs.

* * *

In summary, I would first hold that resort to the legislative history is unnecessary and would affirm on the basis of the plain language of the statute. Secondly, even if it is assumed *arguendo* that the statute is ambiguous, there are: (A) an established rule of statutory construction, (B) a statutory presumption, (C) administrative interpretations of the Act, and (D) a narrow and restricted scope of review in this court, all of which should control our disposition of this case and which, in my view, require affirmance. The majority fails to consider these factors, and in doing so commits error.

IV.

In all candor, I must confess that my objections to the majority's resort to legislative history might have been somewhat mollified had the prize been worth the hunt. Despite close examination of the background of the LHWCA and the 1972 amendments in Part IV of the majority opinion, however, my brothers are unable to produce any statement of congressional intent which conclusively resolves the matters here in issue. Indeed, contrasted to the straight-forward language of amended § 902(3), the phrasing of the House Report relied upon by the majority is to me virtually useless as a guide to who is covered and who is not.[7]

The sentence in the House Report thought crucial by the majority reads as follows: "Thus, employees whose

[7] *See* footnote 3 of the majority opinion, *supra*.

responsibility is only to pick up stored cargo for further transshipment would not be covered, nor would purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo." I think they read more into the sentence than is there. In the first place, over-the-road and local truck drivers who come to a terminal to pick up cargo for further transshipment would certainly not be covered for several reasons: (a) ordinarily they are at the outer perimeter of the terminal and not on "navigable water,"[8] (b) usually truck drivers, certainly if unionized, never load their trucks; they only *drive* them. The sentence from the House Report is inartful, and seems to mean that neither clerical workers nor truck drivers picking up shipments are covered and for the same reason: neither category of workers have anything to do with the loading or unloading of cargo. The wording in the House Report just quoted cannot be so broadly construed so as to exclude from coverage those workers who (1) work on the "navigable waters" and (2) must directly handle cargo in the *overall* process of loading and unloading ships.

I think it is clear that the legislative history standing alone cannot support the majority position. At best, the House Report matches its own ambiguity against that of the statute. The majority opinion makes sense only when the legislative history is paired with the "point of rest" theory, a concept which appears *nowhere* in the legislative history *or* the statute, and one which I predict, will confound and perplex this court for years to come.

According to the majority, waterborne cargo leaves the chain of maritime commerce when it is taken off the ship and lowered to its "point of rest." Likewise, cargo enters

[8] Section 903(a), reproduced at page 8 of the majority opinion, *supra*.

maritime commerce when it is picked up from its "point of rest" and loaded onto the ship. Waterfront employees who handle cargo on the landward side of this point would thus not be covered by the Act, for their service would not be "maritime employment." On the other hand, as this same cargo passes through the "point of rest" seaward, it somehow undergoes a qualitative metamorphosis, acquiring maritime characteristics; employees who handle the cargo on that side of the point are engaged in "maritime employment" and are covered by the Act. Thus, the location of the "point of rest" is crucial.

The majority relies upon two pre-amendment definitions urged upon the court by appellants in their briefs. The Norfolk Marine Terminal Association Tariff (Item 290) defines the term thus:

> The term "point of rest" means a point within a Terminal where the terminal operator designates that cargo or equipment be placed for movement to or from a vessel.

Federal Maritime Commission Regulations, 46 C.F.R. § 533.6(c), refer to the point as follows:

> "[P]oint of rest" shall be defined as that area on the Terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned from the receipt of outbound cargo from shippers for vessel loading.

In addition, the FMC has noted:

> The handling of cargo by a Terminal operator is (t)he service of physically moving cargo between the point of

rest and any place on the Terminal facility other than the end of the ship's tackle. 46 C.F.R. Section 533.6 (d)(6).

Where in the Act or its legislative history is there any suggestion that the Congress meant for us to "read into" the statute the proposition that "maritime employment" exists only on the seaward side of this "point of rest" as defined in these pre-amendment regulations? If Congress, as appellants claim, meant to embrace the concept of the "point of rest" as a demarcation line between "maritime" and "non-maritime" employment, why was this "generally understood" doctrine not explicitly written into § 902(3) of the Act, defining "employee," or at the very least, mentioned in the legislative reports? Surely a concept of such alleged widespread use and application is too conspicuous by its absence to be read into the statute. This court has no license to find in a statute words which the Congress did not put there.

"Statutory explication may be an art, but it must not be artful." *United States* v. *Parker*, 376 F.2d 402 (5th Cir. 1967). "[O]ne sentence in a Senate Report is not controlling where both houses of Congress have passed a bill containing unambiguous language to the contrary." *Abell* v. *Spencer*, 225 F.2d 568 (D.C. Cir. 1955). "[W]e know of no authority for the substitution of the language of a Committee Report for that of the statute to which it relates." *Wodehouse* v. *Commissioner*, 166 F.2d 986 (4th Cir. 1948).

A survey of legal commentary on the 1972 amendments[9] reveals only one instance where the point of rest theory was

[9] *See* authorities cited in footnote 1, *supra*.

discussed,[10] although shoreside extension of coverage was an issue considered by every writer.

That the "point of rest" theory attracts so little support from legal scholars suggests to me their awareness that its application would destroy congressional purpose and emasculate the administration of the Act. Counsel for appellants have conceded, both in their briefs and in oral argument, that the location of the "point of rest" will vary from port to port, depending upon the sophistication of each port's cargo-handling facilities. The definitions relied upon by the majority, moreover, would grant to the terminal operator power to shift unilaterally the "point of rest" seaward or shoreward at his whim or caprice.

If the "point of rest" theory remains wedged between the lines of the LHWCA, the result can only be to erect yet another "situs" requirement for coverage. Once the initial "situs" test is satisfied, *i.e.*, it is determined that a worker is injured on "navigable waters" as defined by the Act, the only remaining inquiry should be whether his employment is "maritime." A worker's "status," *i.e.*, whether he is engaged in maritime employment, should be determined by the *nature* of his work, and not *where* he performs it. Yet, the "point of rest" theory, adopted by the majority, means that workers performing the *same* function, handling the *same* cargo, will be treated differently depending upon *where* they work, even though they are all working on the premises of a terminal conceded to be within the Act's definition of "navigable waters." It was precisely this anom-

[10] *Vickery, supra* note 4 at 68. In the introductory paragraph to Mr. Vickery's article it is stated that he worked "extensively" with the Congress as a representative of several maritime and steamship associations in drafting the 1972 amendments. Yet I note again that the "point of rest" theory which, he insists, is a part of the statue is nowhere to be found in the Act nor is it mentioned in the legislative history.

aly, where workers exposed to identical risks receive disparate workmen's compensation benefits, which provided the impetus for the 1972 amendments.[11] Thus, the majority effectively holds that the Congress has failed in its effort to correct a bad situation, and that coverage even yet depends upon a fictional location—point of rest—that has no relation whatever to the inherent risks of employment.

All three plaintiffs in these appeals were required to handle ship's cargo while on the navigable waters of the United States. The risks incident to such hazardous employment resulted in unfortunate injury to all three. I believe the LHWCA covers each one, and that Congress intended just such a result.

V.

I am convinced that Adkins, Brown and Harris are "employees" covered by the Act, whether the nature of their employment is termed "maritime," "longshoring," "harborworker," or "loading and unloading." It is clear, however, that "maritime employment" is the broadest of the terms, while "loading and unloading" is the narrowest and the most indisputably "maritime." Accordingly, while I prefer not to quibble over labels, I feel it important to demonstrate that there is ample case law precedent for the proposition that all three plaintiffs were engaged in "loading and unloading"[12] ships, an occupation which is inherent in the

[11] Nacirema Operating Co. v. Johnson, 396 U.S. 212 (1969); Note 1973 Wash. U.L.Q., *supra* note 1 at 666.

[12] *See, e.g.*, Gorman, 20 Practical Lawyer, *supra* note 1 at 18. (". . . the test for coverage is whether the employee is 'directly involved' in loading, unloading, repairing or building a vessel. There is bound to be litigation that will outline in a case-by-case basis the tests to determine coverage of employees injured in adjoining areas."); Note, 1973 Wash. U.L.Q., *supra* note 1 at 670; Note 4, Rutgers-Camden L.J., *supra* note 1 at 410-412.

work of longshoremen, who, in turn, are defined by the Act to be in "maritime employment" and thus are covered "employees."

Most of the cases[13] describing the "loading and unloading" of ships involve attempts by longshoremen to assert a cause of action in admiralty against a shipowner for injuries sustained in ship's service.

In *Litwinowicz* v. *Weyerhaeuser S.S. Co.*, 179 F.Supp. 812 (W.D. Pa. 1959), a plaintiff was injured as steel beams were being loaded into a vessel. Plaintiff's job was to prepare the beams for unloading from a railroad car on the pier so that they could be then loaded into the ship. This work was performed on land and *inside* the railroad car. In holding for the plaintiff, the court remarked:

> The term loading is not a word of art, and is not to be narrowly and hypertechnically interpreted. Plaintiff's actions at the time of the accident were direct, necessary steps in the transfer of the steel from the railroad car into the vessel which constituted the work of loading.

179 F.Supp. at 817-18. The court expressly rejected the defense contention that plaintiff was merely preparing the cargo for loading, and was therefore not actually engaged in loading the ship.

In *Hagans* v. *Ellerman & Bucknall S.S. Co.*, 318 F.2d 563 (3d Cir. 1963), bags of sand were unloaded from a ship in canvas slings. The bags were placed upon a four-wheeled flatbed truck; then a tow motor vehicle was hooked to the

[13] Although the Act has been amended, prior cases defining the scope of "maritime employment" and "loading and unloading" are still useful in determining who is covered under the 1972 amendments and who is not. 1A Benedict, *supra* note 1 at § 18.

truck and pulled it into a large warehouse building some distance from the ship's berth. After the truck arrived inside the warehouse, plaintiff's job was to lift off bags of sand and stack them five-high on the floor of the warehouse. Plaintiff slipped on loose sand on the warehouse floor and was injured. The defense claimed that plaintiff was merely stacking bags for purposes of transshipment, an argument which has a familiar ring in the context of the cases here on appeal. The court, in rejecting this argument, held:

> He was unloading bags of sand from the motor-towed trucks and placing them in the first immobile resting place ashore. They were the same bags handled by his fellow longshoremen who had started the process of discharge of the cargo in the hold of the vessel. The pier apron could not contain the large number of bags which, in any event, had to be protected from the weather, by being placed within the pier building. The conclusion is inescapable that Hagans performed an integral part of the unloading of the vessel and thus as a matter of law he was in ship's service.[14]

318 F.2d at 571.

In *Thompson* v. *Calmar S.S. Corp.*, 331 F.2d 657 (3d Cir. 1964), the problem again involved loading steel from freight cars into a ship. In order to bring a particular freight car into position for unloading, it was necessary to "bump" it into position using other freight cars pulled by the ship's winch. Plaintiff was stationed at the brake of the car to be

[14] The term "first immobile resting place ashore" suggests an awareness by the court of the point of rest theory. Yet note that this was not the determinative factor considered by the court in reaching its ultimate conclusion. Rather, the court emphasized the *nature* of the plaintiff's job and stressed the fact that plaintiff was required to handle the cargo.

unloaded. The impact of the other cars striking the one upon which plaintiff was standing catapulted him across the track where his left leg was amputated by the wheels of the railroad car. The court had no difficulty finding that plaintiff was engaged in the process of loading a ship, although he was not even handling cargo at the time of his injury.

In *Spann* v. *Lauritzen*, 344 F.2d 204 (1965), nitrate powder was being unloaded from a ship by crane and dropped into a hopper on the pier. As trucks drove under the hopper, plaintiff would discharge nitrate into the waiting trucks by pulling a heavy bar or handle. A malfunction of the handle caused plaintiff's injuries. The question on appeal was whether plaintiff was *unloading* a ship or merely *loading* a truck for further transshipment. Citing *Hagans, Calamar,* and *Litwinowicz, supra,* the court held plaintiff was engaged in "unloading" a ship, and was "no less so because modern ingenuity suggested the desirability of combining the unloading of the vessel with the loading of the trucks. . . .The labor saving method here used which facilitated the removal of the cargo by motor vehicles may not be held to eliminate the unloading of the cargo from the area of traditional work of the seamen in the service of the vessel." 344 F.2d at 206.

In *Olvera* v. *Micholos*, 307 F.Supp. 9 (S.D. Texas 1968), plaintiff was using a power shovel to pick up corn from a railroad car and move it into a warehouse, from which it was then loaded into a ship's hold. The district court refused a defense motion for summary judgment on plaintiff's personal injury claims on the grounds that plaintiff could possibly prove that his work was "an essential part of the loading process." 307 F.Supp. at 11.

In *Byrd* v. *American Export Isbrandtsen Lines, Inc.*, 300 F.Supp. 1207 (E.D. Pa. 1969), plaintiff was attempting to move cargo from the back of the pier into a position on the

front of the pier for loading onto a ship. Plaintiff was injured while operating a forklift truck for this purpose. In holding that plaintiff was "essentially engaged in a loading operation," 300 F.Supp. at 1208, the court relied upon *Litwinowicz, supra,* and declared that "defendant unduly delimits the term 'loading' to the actual transfer of the cargo from the front of the pier to the vessel." 300 F.Supp. at 1028.

The plaintiff in *Chagois* v. *Lykes S.S. Co.,* 432 F.2d 388 (5th Cir. 1970), was standing inside a boxcar operating an auger which facilitated the even flow of rice out of the railroad car. Rice flowed from the railroad car into a shore-based hopper and was thence loaded in bulk into the hold of a waiting vessel. Plaintiff was injured operating the auger. In holding that plaintiff was engaged in loading a ship, the court held that "his work . . . was an essential part of an unbroken sequence of moving the rice from the pier to the ship." 432 F.2d at 391.

A very important case is *Law* v. *Victory Carriers, Inc.,* 432 F.2d 376 (5th Cir. 1970). Plaintiff in this case had various waterfront duties. On the day of his accident he was driving a forklift on the dock. Plaintiff would take the cargo from one point on the pier to another point closer to the ship. He was injured during this process.

The court first considered the minority view of "loading" ships. "One approach . . . is to define 'loading' in an exceedingly narrow and mechanical fashion, limiting it to those activities which begin with the physical act of lifting the cargo onto the vessel." 432 F.2d at 380. The court cited as illustrative of this doctrine *Drumgold* v. *Plovba,* 260 F.Supp. 983 (E.D. Va. 1966). The court then noted that "the more prevalent view, however, is found in cases which define the terms 'loading' and 'unloading' in a more pragmatic and less ritualistic sense." 432 F.2d at 383.

The court concluded:

> We choose to align ourselves with the cases which define "loading" and "unloading" in a realistic sense rather than as hypertechnical terms of art. . . . He was a part of a group of longshoremen who were engaged in the total operation of moving cargo from the dock to the vessel. . . . The efforts of both the ship-side workers and the shore-side workers were necessary to load the ship. . . . Laws' activities had proximity to and continuity with the job at hand—the task of loading cargo aboard the [ship]. His specific job performance was so integrally woven into the entire loading operation that the two cannot be separated except by the erection of hypertechnical and unrealistic legal barriers. If the terms . . . are to be terms associated with reality rather than mere conceptual microcosms without adjuncts beyond the ship's beam, we have no choice but to conclude that the plaintiff Law was engaged in loading the [ship]." 432 F.2d at 384.[15]

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[15] The Supreme Court reversed this opinion of the Fifth Circuit in Victory Carriers, Inc. v. Law, 404 U.S. 202, but on grounds which had nothing to do with the Fifth Circuit's approach to "loading and unloading." The Supreme Court reversed as to *liability*, holding that state workmen's compensation laws applied since the LHWCA could only apply within the reach of federal admiralty jurisdiction, *i.e.*, on the "navigable waters" of the United States. This opinion inspired in part the effort to amend the LHWCA so as to include certain shore-based facilities within the definition of "navigable waters."

The Supreme Court did *not* reverse the Fifth Circuit on the ground that it had incorrectly determined that Law was engaged in loading the ship. Indeed, this is made explicitly clear in footnote 14 of the opinion, 404 U.S. at 214. There the Supreme Court held that limiting coverage under the LHWCA to work performed on "navigable waters" would make it unnecessary for the Court to become involved in the proper one, and would suggest that this circuit has in fact adopted this view in the *Gutzeit* case, discussed *infra*.

Since the reversal was not grounded in the Fifth Circuit's definition of loading and unloading, I think that such an approach is still a dispute over what is and is not "loading and unloading." *Id.*

In *McNeal* v. *Havtor,* 326 F.Supp. 226 (E.D. Pa. 1971), plaintiff's job was to operate a "squeeze lift" truck within the confines of a warehouse or pier shed. His job was to lift and transfer cases from pallets owned by one company to pallets owned by the defendant. The plaintiff never went aboard a vessel, and his function was simply to move cargo from one pallet to another inside the pier shed. Plaintiff was injured due to some defect in the truck. The court stated:

> Defendant asks that we characterize libelant's job as a mere transfer of materials from the place on the pier warehouse to another place within the warehouse. . . . We cannot subscribe to . . . the narrow characterization urged by defendant. The more prevalent view which is well supported by authoritative case law is to define the term "loading" in a realistic, pragmatic and non-ritualistic manner.

326 F.Supp. at 228.

The court states the rule thus:

> Where the conduct in question is a direct and necessary step in the loading operation and where the equipment being used is necessary for that purpose, libelant must realistically be considered as engaged in the loading process of the vessel for the purposes of unseaworthiness.

326 F.Supp. at 229.

The court also noted that:

> [B]ecause the work was done by three separate longshoring gangs in three integrated steps does not make the entire operation any less a loading operation. . . . In a realistic sense, the loading process must begin

> somewhere. We hold, on the present record, that it at least begins when the intended cargo in the pier shed begins its movement towards the ship. We consider it a strained analysis that the process of loading may only be characterized as the actual physical lifting of the cargo into the ship's hold.

326 F.Supp. at 229.

Garrett v. *Gutzeit,* 491 F.2d 228 (4th Cir. 1974), is a Fourth Circuit case decided in 1974. The factual situation involved unloading bales of paper from a ship. The cargo was removed from the ship and set down on the pier where other members of the longshoring gang then moved the bales one at a time on hand trucks into a pier shed. As they arrived in the shed, plaintiff's job was to take the cargo off the hand trucks and stack the bales four-high. The court noted that "the cargo was transferred from the pier apron and stacked in the shed to facilitate the removal of more bales from the hold." 491 F.2d at 230. When one of the metal bands encasing the cargo snapped, the plaintiff was injured.

The court held:

> The [district] court apparently concluded that "unloading" ceases when the cargo is no longer in contact with the ship, *i.e.,* when the bales were deposited on the pier and discharged from the ship's gear. Although we find this theory appealing because of its ease of application, we believe that the case law rejects such a narrow definition of "unloading."

491 F.2d at 228.

The case is also important because it apparently rejects the narrow definition of "loading and unloading" set forth in *Drumgold, supra,* 260 F.Supp. 983. The court first noted

the district court's reference to its prior decision in the *Drumgold* case, and held:

> We, however, are guided by the historical development of the warranty rather than by arbitrary definitions of admittedly amorphous terms. . . . The record in the instant case demonstrates that it was necessary to move the bales away from the side of the ship as they were discharged from the ship's gear so the additional bales could be unloaded. It was, therefore, a necessary step in the unloading operation.

491 F.2d at 236.

The *Gutzeit* case is important to this appeal because it aligns this circuit with the view that "loading and unloading" are not "words of art" and ought rather to be given a "realistic" meaning.

The only realistic conclusion in this appeal is that Brown, Harris, and Adkins were all engaged in the overall process of loading and unloading ships. Donald Brown was a forklift operator employed to pick up cargo inside a warehouse and load it into large containers which, when sealed, would be placed aboard a ship. Vernie Lee Harris was a hustler driver who moved containers "stuffed" with cargo from a long term storage lot to a marshaling area adjacent to the pier. Adkins operated a forklift truck inside a pier shed, and would pick up cargo recently "stripped" from containers and load these pallets into trucks for shipment to the ultimate consignee. All three worked on terminal premises, *i.e.*, on "navigable waters." All three were required to subject themselves to the risks inherent in moving and handling cargo and in operating the potentially dangerous machinery of the trade. All three were injured as the direct result of the hazards of such employment. In my opinion, these three

plaintiffs were injured in the process of loading or unloading a ship while upon navigable waters. The plain language of the statute requires no more (and indeed, less) than this, and neither should this court. But if I am wrong, and these plaintiffs were not engaged in longshoring work, surely they must be found to have been engaged in maritime employment—the generic term—or else it seems to me the Congress has legislated in vain.

I dissent.

Decision of the Benefits Review Board,
BRB No. 74-123.

U.S. DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD
WASHINGTON, D.C. 20210

WILLIAM T. ADKINS
Claimant-Respondent

v.

I.T.O. CORPORATION OF BALTIMORE
Employer

and

LIBERTY MUTUAL INSURANCE COMPANY
Carrier
Petitioners

Issued: Nov. 29, 1974

Appeal from Decision and Order of Herman T. Benn, Administrative Law Judge, United States Department of Labor.

Before: Washington, Chairperson, Hartman and Miller, Members.

Hartman, Member:

This is an appeal by the employer and carrier from the decision and order (74-LHCA-12) of Administrative Law Judge Herman T. Benn awarding temporary total and permanent partial disability benefits and a fee to the claimant's attorney under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U.S.C. § 901 *et seq.*

The administrative law judge found that the claimant, a forklift operator, was injured on March 9, 1973, while engaged in employment covered by the Act. The claimant's duties consisted of loading and unloading cargo from trucks in a consolidation terminal or shed. This shed was 685 feet from the water and was used for receiving and dispatching cargo from trucks and for stuffing and stripping containers.

The claimant injured his knee and back when the load of another forklift swung and hit his knee knocking him to the floor. Claimant returned to work three months later and claims to continue to experience pain and physical limitation.

At the time of the injury, claimant was loading stripped cargo into trucks for further movement. These were the routine duties performed by the claimant as found by the administrative law judge.

The employer-carrier furnished medical services and paid compensation pursuant to the Maryland statute until claimant returned to work.

The administrative law judge found that the claimant was engaged in employment covered by the Act, as amended, and awarded compensation for temporary total disability and for 25 percent permanent partial disability to the right leg.

The employer-carrier have appealed alleging that the claimant was not engaged in the loading and unloading of vessels or in maritime employment; that the employer was not an "employer" within the definitions of the Act; that the injury did not occur on navigable waters as defined in the Act; and that the claimant, therefore, is not entitled to recovery under the provisions of the Act. They also appeal from the award of attorney's fee alleging it to be excessive.

The Board finds that the record supports the administrative law judge's findings that claimant's duties at the

time of injury were loading cargo which was still in maritime commerce onto trucks for further trans-shipment.

We therefore look to the basic issues on appeal relating to whether the claimant was engaged in maritime employment and thus covered by the provisions of the Act.

Before the Act came into existence, longshoremen injured aboard a vessel were exempted from state compensation remedies while those injured on the pier, a then extension of the land, were protected. *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917). Thereafter, in 1927 Congress enacted the Longshoremen's and Harbor Workers' Compensation Act to provide a compensation remedy to those longshoremen not covered by state laws, i.e. those injured upon navigable waters. This of course gave rise to inconsistencies depending on where a longshoreman was injured.

To further abolish the inequities of compensation coverage, Congress amended the Longshoremen's Act in 1972 to expand coverage to the land-based employees of the longshoring, shiprepairing and shipbuilding industries. Such amendments make it clear that injuries sustained on land, including "any adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel . . .," are to be included within the jurisdiction of the Act replacing the protection previously provided by state laws. *See Victory Carriers, Inc.* v. *Law*, 404 U.S. 202 (1971).

The Board finds that the fact that cargo does not move directly between the ship and the shed is of no consequence in the determination of maritime employment. Although the record supports the finding that the claimant was involved in the process of loading and unloading vessels, such a conclusion was not essential. The claimant was performing the first and last tasks in a series of longshoring operations thereby bringing him within the scope of maritime employment. Maritime jurisdiction has long since

been extended from the ship side of the water's edge to the dock, which was held to be within the scope of maritime law. *Gutierrez* v. *Waterman SS Corp.*, 373 U.S. 206 (1963).

The employer's position that it was performing two separate functions, one as a stevedore and the other as a warehouser is irrelevant. The cargo with which the claimant worked on a routine basis was within maritime commerce. *See Mamiye Bros.* v. *Barber Steamship Lines, Inc.*, 241 F. Supp. 99 (S.D. N.Y. 1965), *aff'd*, 306 F.2d 774 (2d Cir. 1966), *cert. denied*, 385 U.S. 835 (1966). Therefore, both claimant and employer were engaged in maritime employment bringing both within the scope of the Act.

Finally, petitioners contend that the injury did not occur on an "adjoining area customarily used by an employer in loading, [or] unloading" a vessel. Having already concluded that the claimant was engaged in longshoring operations, the Board cannot narrowly construe "adjoining" to restrict the situs of an injury to an area immediately adjacent to navigable waters. Section 3(a) of the Act does not imply such a restricted interpretation:

> any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining areas customarily used by an employer in loading, unloading, repairing, or building a vessel.

Moreover, the word "terminal" has been interpreted to include yards, storage facilities, stationhouses, platforms, and depots. *United States* v. *Knight*, 451 F.2d 275 (5th Cir. 1971). The Board finds that the shed, or consolidation terminal, in which the injury occurred is included within the scope of coverage of the amended Act whether considered as a terminal or adjoining area customarily used in the loading and unloading of vessels.

The Board finds that the petitioners have not established that the fee awarded to claimant's attorney in the amount of $2,900 is excessive.

The Board awards to claimant's attorney a fee of $500 for services performed in defense of this appeal, such fee to be paid by the petitioners in addition to the compensation awarded and in a lump sum directly to said attorney.

The Board therefore affirms the decision and order appealed from.

s/ RALPH M. HARTMAN
Ralph M. Hartman, Member

We Concur:

s/ RUTH V. WASHINGTON
Ruth V. Washington, Chairperson

s/ JULIUS MILLER
Julius Miller, Member

Dated this 29th day
of November 1974.

Decision and Order of Administrative Law Judge (ALJ) Benn.

U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, D.C. 20210

In the Matter of
WILLIAM T. ADKINS
Claimant

vs.

ITO CORPORATION OF BALTIMORE
Employer

LIBERTY MUTUAL INSURANCE CO.
Carrier

Case No.
74-LHCA-12
(Formerly 6670)

Issued: March 26, 1974

Before: HERMAN T. BENN
Administrative Law Judge

DECISION AND ORDER

This case is brought pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* (hereinafter referred to as the Act) and the Rules and Regulations implementing the Act.

A hearing in this case was held on December 12, 1973, in the City of Baltimore, Maryland. The parties were represented by counsel and were afforded full opportunity to adduce evidence and to examine and cross-examine witnesses. Thereafter the parties filed briefs in support of their respective positions. Also the parties submitted

additional documentary evidence subsequent to the hearing, including a medical report from Dr. Arthur Baitch dated January 9, 1974, which was offered by the Respondents; medical reports from Doctors Levine and Macht dated January 5 and 7, 1974, respectively; also counsel's petition for approval of a fee and statement with respect to disability are all hereby made a part of the record.

The court has given careful consideration to the entire record in this case; and based thereupon makes the following Findings of Fact, Conclusions of Law and Order:

Findings of Fact

1. The Claimant was 45 years of age at the time of the hearing. He resides with his wife and three daughters, and has a fifth grade education.

2. The Claimant was injured on March 9, 1973, while employed by the I.T.O. Corporation of Baltimore, Maryland, a stevedoring company, at the Dundalk Marine Terminal, which is now owned by the Maryland Port Administration of the Maryland Department of Transportation.

3. The said Employer was under contract at the time of the accident with the United States Lines (a marine shipping company) for loading and unloading vessels and a terminal contract to stuff and unstuff containers.

4. Containers were generally given one of four designations: house-to-house; house-to-pier; pier-to-house; or pier-to-pier movements.

5. Those containers designated house-to-house or pier-to-house were delivered directly to a trucking company or a warehouse outside of the terminal area and are handled by employees of the U. S. Lines, and not by the I.T.O. Corporation.

6. The containers designated pier-to-pier or house-to-pier were required to be unpacked, unloaded, or "unstuffed" as is known in the trade. These containers would, after being unlashed on board ship, be picked up by a crane from their place of rest on the ship and placed on a wheeled chassis which is standing on the pier alongside the ship. A driver operates a vehicle, known in the trade as a hustler, takes the container on the chassis to the U. S. Lines marshaling lot and parks it there.

7. The container remains in the said marshaling lot until the said U.S. Lines Company advises the said I.T.O. Corporation that it desires a specified container to be unstuffed. At that time I.T.O. employees move the designated container to a consolidation terminal called the "shed."

8. The said shed, a portion of which is utilized by the said U.S. Lines for stuffing and unstuffing containers, also for receipt and dispatch of cargo discharged from and received in the said containers, is located about 685 feet back on land from the water's edge where the ships are docked at the pier.

9. The said sheds are constructed with numerous doors, said to be eleven or twelve, on the side facing the pier, and the same number on the opposite side. There is a ramp at each end by which vehicles may have access to the interior of the shed.

10. The incoming containers are unstuffed and the outgoing containers are stuffed at the side of the shed where the doors face the pier. The vehicles from which, and into which, incoming and outgoing cargo are loaded and unloaded use the doors on the opposite side of the shed.

11. There are several such sheds located in the said area known as Dundalk Marine Terminal. The said shed used

by the U. S. Lines is designated shed eleven, and is sometimes called a consolidation warehouse. There is a position in the shed known as checker. The employee who holds this position checks the cargo to determine whether it is received or dispatched as ordered. The cargo in said shed is received and delivered on U.S. Lines delivery and receipt documents.

12. All of the work required in the above-described movement of cargo, from the unlatching of the containers from the ship to the discharge of the cargo from the shed, and the consolidation of the incoming cargo to be shipped by vessel, and stuffing of the containers with same, to the loading of the ship, is performed by the employees of the I.T.O. Corporation, under its said contracts with the said U.S. Lines Company. All of said employees are members of the International Longshoremen's Association, an AFL-CIO affiliate.

13. The Claimant was employed by I.T.O. as an operator of a fork lift. His major function was to assist in loading and unloading cargo which was being received and dispatched in and from the said shed. In addition thereto, he was called upon by his said employer at times, mostly on weekends and overtime, to operate said fork lift onboard ship in connection with loading and unloading same, and in stuffing and unstuffing containers.

14. A ship known as the American Legend arrived and docked at pier nine of the said Dundalk Marine Terminal at 7:45 A.M. on March 2, 1973. The cargo designated for said terminal was unloaded and the said ship departed the same date at 10:28 P.M.

15. The cargo which was unloaded from said ship was incased in containers which after being discharged from

the ship were taken to the storage area of the U.S. Lines terminal yard sometimes called the marshaling area. On March 5th one of the containers which had included in its cargo some brass tubing was taken to the said shed eleven, some one thousand feet from its place of rest in the said marshaling area, and its cargo stripped or unloaded and placed in the shed.

16. On March 9, 1973, the Claimant, Mr. William T. Adkins, was assigned to work with a checker in receiving and delivering cargo which was being brought into shed eleven by trucks for shipment by the U.S. Lines' vessels, and loading cargo which had been brought in by vessels in containers which, after being stripped, was being dispatched from shed eleven for further movement. The Claimant stepped down from the fork lift which he was operating and placed a "chock" under some "freight" in order that the blade of the fork lift could be moved under the same. Another fork lift operator backed up and the freight which was being carried by the second operator began to swing toward the Claimant and he shoved it back against a truck tire. The freight, which weighed about four hundred pounds, bounced off the Claimant's right leg breaking it at the knee area and injuring his lower back as he was knocked to the cement floor. He was taken to City Hospital in Baltimore, Maryland, where he remained about six days, and was placed in traction and a cast. He returned to his same job as fork lift operator after about three months. He continues to experience some pain and physical limitation.

17. Subsequent to the injury a claim was filed with the Workmen's Compensation Commission of the State of Maryland. Pursuant to same medical services were furnished, and compensation was paid Claimant for temporary total disability under the Maryland Statute until he returned to work.

18. The Claimant takes the position that the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended by Congress in 1972, extends coverage to include his job as described above, and that the Claimant has a permanent partial disability.

19. The Respondents controvert the said position of the Claimant, and takes the position that the job performed by the Claimant is covered only by the State of Maryland's Workmen's Compensation Statute, and that he has no residual "disability," as that term is contemplated under workmen's compensation statutes.

20. The issues thus raised are whether the provisions of the Act, as amended, cover the Claimant, and if so, the extent of his "disability" as that term is contemplated under the Act.

Opinion

At the outset we are confronted with the jurisdictional issue bearing on the extent to which longshore work performed on land is covered, under the provisions of the Act, as amended in 1972. This case appears to be one of first impression on this issue.

In the interpretation of a statute, the courts look diligently for the intention of the legislative body, as expressed in the words of the statute, keeping in view at all times, the old law, the evil, and the remedies. See *Camineth* v. *United States,* 37 Sup. Ct. Rep. 192; *Nacirema Co.* v. *Johnson,* 396 U.S. 212.

The terms of the statute here involved as it was passed by Congress on March 4, 1927, and prior to being amended in 1972, 33 U.S.C. 903(a) are, in pertinent part, as follows:

"Compensation shall be payable under this Act in re-

spect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law . . . ."

By way of background, ten years before Congress passed the Longshoremen's Act of 1927 the United States Supreme Court decided *Southern Pacific Co.* v. *Jensen,* 244 U.S. 205. The major thrust of this case was to the effect that a State was without power to extend a compensation remedy to a longshoreman injured on the gangplank between the ship and the pier. The decision left longshoremen injured on the seaward side of the pier without a compensation remedy, while longshoremen injured on the pier enjoyed the protection of state compensation acts. See *State Industrial Commission* v. *Nordenholt Corp.,* 259 U.S. 263. This left the longshoremen working aboard ships on navigable waters of the United States without compensation remedy, Federal or State.

Twice Congress attempted to fill this gap by passing legislation that would have extended state compensation remedies beyond the line drawn in *Jensen, supra.* Each time the Court struck down the statute as an unlawful delegation of congressional power. See *Washington* v. *Dawson & Co.,* 264 U.S. 219; and *Knickerbocker Ice Co.* v. *Stewart,* 253 U.S. 149.

Finally, Congress determined that what it could not empower the States to do, it could do itself—it passed the Longshoremen's Act of 1927. This Act extended a compensation remedy to workmen injured beyond the pier and hence beyond the jurisdiction of the States. This purpose was clearly expressed in the language limiting coverage

to injuries occurring "upon the navigable waters," and permitting recovery only "if recovery . . . through workmen's compensation proceedings may not validly be provided by State law."

The Supreme Court of the United States interpreted the above language of the 1927 Act as terminating the coverage of compensation with respect to federal jurisdiction at the water's edge. Longshoremen working on the pier or a platform permanently attached thereto were left to the mercy of the various state legislatures. See *Nacirema* v. *Johnson, supra.*

One of the evils of this resulting situation was the lack of uniform compensation. Depending on which side of the water's edge the longshoreman happened to be working when he was involved in an accidental injury, and what state he happen to be working if on the land side of the water's edge.

It has been held that the purpose of including all cases of admiralty and maritime jurisdiction within the federal judicial power was to insure a body of maritime law which should, so far as its characteristic features were concerned be uniform throughout the United States. *Knickerbocker Ice Co.* v. *Stewart,* 253 U.S. 149; 11 A.L.R. 1145.

It has, accordingly, been decided that Congress may not modify the general maritime law as to save to persons injured in the course of maritime employment the rights and remedies available under the workmen's compensation acts of the states in which the injuries occur. See *Knickerbocker, supra;* also *State of Washington* v. *W. C. Dawson & Co.,* 264 U.S. 219; and 25 A.L.R. 1008.

The following comment is included at page 75 in the Legislative History Of The Longshoremen's and Harbor Worker's Compensation Act Amendments of 1972 which was prepared by the Subcommittee on Labor of the Com-

mittee on Labor and Public Welfare of the United States Senate:

> "The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over water. Accordingly, the bill would amend the Act to provide coverage of longshoremen, harbor workers, ship repairmen, ship builders, shipbreakers, and other employees engaged in maritime employment (excluding masters and members of the crew of a vessel) if the injury occurred either upon the navigable waters of the United States or any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other area adjoining such navigable waters customarily used by an employer in loading, unloading, repairing, or building a vessel."

Consideration will now be given to the language of the said coverage section of the Act as amended in 1972, which is, in pertinent part, as follows:

> "Composition (sec) (Compensation) shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, maritime railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel). . . ."

A review of the facts in this case reveals that the cargo of copper tubing involved in the injury here was moved by employees of I.T.O. Corporation, which was under a stevedoring contract with the United States Lines, a marine shipping company, to load and unload vessels. The said

cargo arrived on the vessel American Legend, and the said employees unlatched the container and moved it from the vessel to areas specifically stated in the said statute, including the adjoining pier or wharf, other adjoining area, and terminal.

The Respondents place great stress on the word in the statute "adjoining" placing thereupon the restricted meaning of "connecting" which, in fact, is one of its meaning. However it also means, according to Webster's New Word Dictionary, "neighboring," and when used as such does not necessarily connote being physically connected.

The word terminal has been defined by the courts as including yards, docks, storage facilities, station houses, platforms and depots. *United States* v. *Knight,* 451 F. 2d 275; *United States* v. *Spatuzza,* 379 U.S. 829, 331 F. 2d 214.

Terminal has also been defined as "either end of a carrier line." *Beazley* v. *DeKalb County,* 77 S.E. 2nd 740. The court in *Pilot Freight Carriers, Inc.* v. *Scheidt,* 140 S.E. 2nd 383 stated the following with respect to "terminals":

> "Orderly and economical transportation of many relatively small shipments necessitates the establishment of a warehouse, at some convenient point or points, where different shipments destined for the same terminal point can be assembled and loaded in one vehicle. These assembly points are in carrier terminology known as 'terminals.'"

The use of containers in shipping freight by vessels is a modern and comparatively recent means of maritime shipment. It can be readily seen that it may greatly simplify and at the same time reduce the time required to move the freight from pier to ship and from ship to pier. However, at least in handling those containers designated pier to pier, and house to pier, the result is to require more of

the longshoremen's time and effort in moving the freight in the container to the marshaling area, from there to the "shed" or "terminal," stuffing and unstuffing the containers, and dispatching the freight. The above-stated handling of the maritime cargo constitutes an essential part of the loading and unloading process with respect to shipment by vessels, especially as it pertains to containerized cargo. The "shed" or terminal being at one and the same time the beginning and end of the maritime movement. The meaning of the word "terminal" here, which is a critical term in the Act, under the facts of this case, is not only based on its common and usual usage, and the meaning placed on it by the courts, but also by means of *noscitur a sociis.*

The Claimant places much stress upon the fact that he was employed as a longshoreman, and as such was a member of a local union designated as 333 which is an affiliate of the International Longshoremen's Association. However, a name given a harbor worker does not determine his rights to benefits under the Act. The distinguishing factor is the type of work that the injured party was performing. *Olvera* v. *Michalos,* 307 F. Supp. 9. The evidence with respect to the work performed by the Claimant herein includes operating his fork lift in the said terminal building mainly removing cargo to vehicles to be taken out and receiving cargo for maritime shipment. He also helped to stuff and unstuff containers, and worked on board ship with his said vehicle in connection with loading and unloading cargo. The last two duties were mostly performed on overtime. The definitions of "employee" and "employer," as contemplated under the Act, are set out in Section 2, subparagraphs (3) and (4) of the Act and are as follows:

> "The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, ship builder, and ship-breaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.
>
> "The term 'employer' means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel."

The evidence establishes that both the employee and employer in this case fall within the above definitions, respectively. The court concludes therefore that the Act, as amended, extends its coverage of longshore and harbor workers from the water's edge, where the coverage ended under the Act prior to the 1972 Amendments to the discharging of the cargo from the terminal, also known as shed eleven. Thus the Claimant's work at the time of his said accidental injury is within the protective provisions of the Act, as amended in 1972.

Consideration will now be given to the issue of the extent of "disability," as that term is contemplated under the Act, which the Claimant has suffered.

The evidence establishes that the said injury involved herein occurred on March 9, 1973. Diagnoses indicate that the Claimant suffered a comminuted fracture of the upper end of the tibia just below (illegible) joint. There is a small anterior and posterior fragment of bone displaced downwards. There is a large amount of callus and new bone formation present. He also suffered a musculo-ligamentus sprain of his back.

There has been a maximum improvement attained with a residual 25 percent permanent partial loss of use of the right leg, and up to 15 percent of his back.

The Claimant's loss of time from work as a result of the said injury was from March 10 to June 3, 1973.

The evidence establishes further that the Claimant filed for and was paid workmen's compensation under the workmen's compensation statute of the State of Maryland. However, acceptance by such an employee of such payments under a state act does not constitute an election which precludes recovery under the Federal Act. *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 119.

It was stipulated by the parties and the court finds that the Claimant's average weekly wage at the time of the said injury was $284.33.

The evidence establishes that the Claimant returned to his former job, performing his former work of fork lift operator and there is no evidence that his post-injury earning capacity has been adversely affected. The Act does not permit the award of compensation for permanent partial disability aside from scheduled disability unless there has been some loss of wage-earning capacity shown. *Owens* v. *Traynor*, 274 F. Supp. 770.

The court finds that the Claimant is entitled, under Section 8(b) of the Act (33 U.S.C. 908(b)), to compensation for temporary total disability. Also to compensation for 25 percent permanent partial loss of use of his right leg under Section 8(c)(2) and (19) of the Act (33 U.S.C. 908 (c), (2) and (19)).

The court further finds that the Claimant is entitled to medical benefits pursuant to Section 7 of the Act.

As it appears that this case presents an issue of first impression for decision, the court concludes that justice would

best be served by not awarding interest on past due benefits. However the approved counsel fee is assessed against the Respondents pursuant to Section 28(a) of the Act.

Upon the foregoing findings and conclusions, the court makes the following:

Order

1. The Employer/Carrier shall pay to the Claimant compensation for temporary total disability pursuant to Section 8(b) of the Act (33 U.S.C. 908(b)), for the period commencing March 10, 1973 through June 3, 1973, less any sum paid pursuant to the Workmens' Compensation Act of the State of Maryland.

2. The Employer/Carrier shall pay to the Claimant compensation for permanent partial scheduled disability for 25 percent loss of use of his right leg.

3. The Employer/Carrier shall pay the medical expenses in connection with the said injury pursuant to Section 7 of the Act (33 U.S.C. 907), including $50.00 to Allan H. Macht, M.D., 2 East Read Street, Baltimore, Maryland 21202, and $55.00 to Stuart C. Levine, M.D., 507 Latrose Building, 2 East Read Street, Baltimore, Maryland 21202.

4. The Employer/Carrier shall pay to Amos I. Meyers, Esq. the sum of $2,900.00 for legal services rendered in connection with this case. Said sum shall constitute a lien against the said benefits due the Claimant pursuant to Section 28(c) of the Act (33 U.S.C. 928(a)).

s/ Herbert T. Benn
Herman T. Benn
Administrative Law Judge

Dated: March 26, 1974
Washington, D. C.

IN THE

Supreme Court of the United States

No. 76-730

WILLIAM T. ADKINS,
Petitioner,

v.

I.T.O. CORPORATION OF BALTIMORE AND
LIBERTY MUTUAL INSURANCE COMPANY

and

NATIONAL ASSOCIATION OF STEVEDORES,
Respondents.

MEMORANDUM OF NATIONAL ASSOCIATION OF STEVEDORES IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

THOMAS D. WILCOX
919 Eighteenth Street, N.W.
Suite 820
Washington, D. C. 20006

Attorney for Respondent
National Association of Stevedores

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON D. C. 20001

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PRELIMINARY STATEMENT

This memorandum is filed on behalf of the respondent National Association of Stevedores ("Association") in response to the petition for certiorari filed herein on November 24, 1976. The Association was a party in this case before the Benefits Review Board (A. 1a)[1] and before the Court of Appeals below, both on the initial

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[1] All page citations to the Appendix to this Memorandum are herein preceded by the designation "A."

hearing and upon the rehearing in banc (Pet. A. 2a).[2] The judgment of the Court of Appeals, which does not appear in the Appendix to the Petition for Certiorari but which is reprinted at pages A. 2-4a of the Appendix to this Memorandum, list the Association as a party bound by the judgments below. Therefore, the Association is a party before this Court, and an automatic respondent to the Petition filed herein (A. 5a) (Supreme Court Rule 21[4]), and the caption to this Memorandum has been revised to reflect the status of the Association as a respondent to the Petition.

STATEMENT IN RESPONSE TO PETITION

The Association does not oppose the granting of the Petition for a Writ of Certiorari in this case. As the national representative of the stevedoring and marine terminal industry, the Association strongly supports an early, definitive resolution of the coverage issues raised by the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act ("the Act").[3] Although it is the position of the Association that this particular case was correctly decided in the court below, it is evident that the Court of Appeals for the Fourth Circuit's decisions below have not brought about a uniform interpertation of the Act's coverage provisions at the Benefits Review Board level and among the Courts of Appeals for the various circuits.

The Benefits Review Board has announced that it will not follow the decision of the court below, but will continue to adhere to its own interpretation of the Act's coverage. *Bradshaw* v. *J. A. McCarthy, Inc.*, 3 BRBS 195 (Nos. 75-209, 209-A, 209-B, January 26, 1976). The

[2] All page citations to the Petitioner's Appendix are herein preceded by the designation "Pet. A."

[3] 33 U.S.C. § 901 *et seq.*

Courts of Appeals which have addressed the coverage issue have generated a diversity of results and legal theories but have not succeeded in resolving the issue.[4]

Since the Petition for a Writ of Certiorari was filed in this case, the Court has granted certiorari to review the decisions of the Court of Appeals for the Second Circuit in *Blundo* and *Caputo*.[5] The Association welcomes these grants of certiorari because review of the *Blundo* and *Caputo* cases will enable the Court to resolve the difficult questions which have arisen with respect to interpretation of the scope of coverage afforded by the 1972 amendments to the Act.

The Association believes, however, that the Court's review of these questions will be facilitated, and the scope of its ultimate decision perhaps broadened, by the consideration of this case together with *Blundo* and *Caputo*. In addition to presenting a further factual context in which to consider the effect of the 1972 amendments, the record in this case contains certain detailed factual in-

[4] *Stockman* v. *John T. Clark & Son of Boston, Inc.*, No. 75-1360 (1st Cir., decided July 27, 1976). *Pittston Stevedoring Corp.* v. *Dellaventura* (2d Cir. Nos. 1004, 1014, 1044, 1111, decided July 1, 1976). *Sea-Land Service, Inc.* v. *Director, Office of Workers' Compensation Programs*, No. 75-2039 (3rd Cir., decided August 5, 1976). *Perdue* v. *Jacksonville Shipyards, Inc.*, 1 BRBS 297 (Jan. 31, 1975), appeal docketed, No. 75-1659 (5th Cir., filed March 13, 1975). *Weyerhaeuser Co.* v. *Gilmore*, 528 F.2d 957 (9th Cir. 1976). For a summary of the conflicts and differences in reasoning contained in these cases, see the Petitions for Writs of Certiorari filed in *International Terminal Operating Co.* v. *Blundo*, No. 76-454, *cert. granted*, December 6, 1976, (hereinafter "*Blundo*") and *John T. Clark & Son* v. *Stockman*, No. 76-571, filed October 22, 1976.

[5] *Pittston Stevedoring Corp.* v. *Dellaventura* (2d Cir. Nos. 1004, 1014, 1044, 1111, decided July 1, 1976, *cert. granted* December 6, 1976 *sub nom. International Terminal Operating Co.* v. *Blundo* (No. 76-454) ("Blundo") and *Northeast Marine Terminal Co.* v. *Caputo* (No. 76-444) ("Caputo"). The Second Circuit's *Pittston* decision has not been officially reported but appears at p. 1a of the Appendix to the *Blundo* petition.

formation regarding the structure and operation of the stevedore and marine terminal industry in the United States. This information is in the form of a 51 page survey entitled "The Stevedore and Marine Terminal Practices at Ports of the United States" which was submitted by the Association in its capacity as a party to the proceedings below. The report was considered by the Fourth Circuit Court of Appeals and is part of the record below (A. 6a). We have been advised by the Clerk of the Court that it would be forwarded to this Court for its consideration if certiorari were granted in this case.

A copy of the report appears in the Appendix to this Memorandum at page A. 7a. The Association believes that consideration by the Court of this report would be of great value in resolving the difficult questions of interpretation raised by the 1972 amendments.[6]

Respectfully submitted,

THOMAS D. WILCOX
919 Eighteenth Street, N.W.
Suite 820
Washington, D. C. 20006

Attorney for Respondent
National Association of Stevedores

[6] The report could, of course, be cited and relied upon by the parties and the Court in the *Blundo* and *Caputo* cases as a part of the record in a closely related case. In view of the report's importance, however, the Court may conclude that formal acceptance of the *Adkins'* record is the more appropriate course to follow.

APPENDIX

U. S. DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD [Emblem]
Washington, D. C. 20210

[Filed as part of the Record May 16, 1974, Elizabeth Rogers Ritz, Clerk, Benefits Review Board]

BRB No. 74-123

I.T.O. CORPORATION OF BALTIMORE
and
LIBERTY MUTUAL INSURANCE COMPANY,
Petitioners
v.

WILLIAM T. ADKINS,
Respondent

ORDER

The National Association of Stevedores, having petitioned this Board for leave to intervene in this matter and having demonstrated that its rights may be affected by the outcome herein, is hereby

GRANTED

Leave to intervene pursuant to 20 C.F.R. Ch. VII, § 802.213. The Board finds that the final disposition of this case will not be delayed by the granting of this petition.

/s/ Ruth V. Washington
RUTH V. WASHINGTON, Chairperson

/s/ Ralph M. Hartman
RALPH M. HARTMAN, Member

/s/ Julius Miller
JULIUS MILLER, Member

Dated this 16th day of May 1974.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 75-1088

NATIONAL ASSOCIATION OF STEVEDORES
and
CALIFORNIA STEVEDORE & BALLAST CO.,
CAROLINA SHIPPING COMPANY,
THE CHESAPEAKE OPERATING COMPANY,
CALICO TERMINAL CO., INC.,
JOHN T. CLARK & SON OF BOSTON,
BERNARD S. COSTELLO, INC.,
DIXIE STEVEDORES, INC.,
ELLER & COMPANY, INC.,
GLOBAL TERMINAL & CONTAINER SERVICES, INC.,
FEDERAL MARINE TERMINALS, INC.,
GULF STEVEDORE CORP.,
HARRINGTON & COMPANY, INC.,
HOWLAND HOOK MARINE TERMINAL CORP.,
INDEPENDENT PIER CO.,
INTERNATIONAL GREAT LAKES SHIPPING CO.,
INTERNATIONAL TERMINAL OPERATING CO., INC.,
LAKE CHARLES STEVEDORES, INC.,
LAVINO SHIPPING CO.,
LUCKENBACH STEAMSHIP CO., INC.,
MCCABE, HAMILTON & RENNY CO., LTD.,
JOHN W. MCGRATH CORP.,
MAHER TERMINALS, INC.,
METROPOLITAN STEVEDORE CO.,
MATSON TERMINALS, INC.,
NACIREMA OPERATING CO., INC.,
NEW BEDFORD STEVEDORING CORP.,
NORTHEAST MARINE TERMINAL CO., INC.,
OLD DOMINION STEVEDORING CORP.,
JOHN J. ORR & SON, INC.,
PALMETTO SHIPPING & STEVEDORING CO., INC.,

PATE STEVEDORING CO.,
P. C. PFEIFFER CO., INC.,
PITTSTON STEVEDORING CORP.,
PORT STEVEDORING COMPANY, INC.,
RYAN-WALSH STEVEDORING CO., INC.,
SHIPPERS STEVEDORING CO.,
T. SMITH & SON, INC.,
STRACHAN SHIPPING CO.,
TRANSOCEANIC TERMINAL CORP.,
UNIVERSAL MARITIME SERVICE CORP.,
WESTFALL STEVEDORE CO.,
WILMINGTON SHIPPING CO.,
YOUNG AND COMPANY OF HOUSTON,
its member companies,

Petitioners,

vs.

BENEFITS REVIEW BOARD,
U.S. DEPARTMENT OF LABOR,
WILLIAM T. ATKINS,

Respondents.

On Petition for Review of the Decision of
The Benefits Review Board

THIS CAUSE came on to be heard upon the petition of the National Association of Stevedores for review of the order of the Benefits Review Board in the matter of William T. Adkins vs. I.T.O. Corporation of Baltimore, dated November 29, 1974, in proceedings before the said Board known upon its records as BRB No. 74-123; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered, adjudged and decreed by the United States Court of Ap-

peals for the Fourth Circuit, that the decision of the Benefits Review Board is reversed.

/s/ William K. Slate, II
Clerk

[Filed Aug. 26, 1976,
U.S. Court of Appeals, Fourth Circuit]

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-730

WILLIAM T. ADKINS,
Petitioner

vs.

I.T.O. CORPORATION OF BALTIMORE

and

LIBERTY MUTUAL INSURANCE COMPANY,
Appellee-Respondent

To THOMAS D. WILCOX, Counsel for Respondent:

YOU ARE HEREBY NOTIFIED that a petition for a writ of certiorari in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the 24th day of November, 1976.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

THOMAS W. GLEASON
Counsel for Petitioner
17 Battery Place, Suite 600
New York, New York 10004

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice need *not* be filed in the Supreme Court.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

William K. Slate, II
Clerk

Telephone 782-2213
Area Code 804
Tenth and Main Streets
Richmond, Virginia 23219

December 14, 1976

Mr. Thomas D. Wilcox
National Association of Stevedores
919 - 18th Street, N.W.
Washington, D. C. 20006

Re: No. 75-1051, I.T.O. Corporation of Baltimore, etc., et al. v. Benefits Review Board, etc., et al.

Dear Mr. Wilcox:

This is to advise you that the *Stevedore and Marine Terminal Practices at Ports of the United States* was timely filed in this office on May 8, 1975.

Sincerely,

WILLIAM K. SLATE, II

By: /s/ Julian H. Layne
JULIAN H. LAYNE
Deputy Clerk

STEVEDORE AND MARINE TERMINAL
PRACTICES AT PORTS OF THE
UNITED STATES

STEVEDORE AND MARINE TERMINAL PRACTICES AT PORTS OF THE UNITED STATES

STEVEDORE AND MARINE TERMINAL PRACTICES AT PORTS OF THE UNITED STATES

The following summary statements have been prepared by member companies of the National Association of Stevedores, plus some stevedore employer members of other organizations. The statements generally discuss the manner in which labor is hired to perform stevedoring operations and marine terminal cargo handling operations. The statements identify the ownership of marine terminal facilities at 36 ports in the United States, and describe what takes place functionally in the movement of water-borne commerce.

Essentially, the movement of water-borne commerce across marine terminals in the United States involves two distinct and separate functions which are performed by two distinct employers. The stevedore employer hires longshore labor to physically load cargo onto or unload cargo from a vessel. In the case of imported cargo, the cargo unloaded from the vessel is moved by the longshore workers to storage area, holding area, or marshalling area known throughout the maritime industry as the "point of rest". In the case of exports, the cargo is moved from the "point of rest" to and then onto the vessel.

Any movement or handling of water-borne cargo, import or export, between the point of rest and any place on the marine terminal or away from the terminal facility is a terminal operation performed by a marine terminal operator, private or public. The labor which performs such functions are terminal labor, sometimes called "shortshoremen". Although the workers which perform stevedore and terminal functions may be from the same union organization, each class of worker is paid from a separate payroll and are subject to special work rules.

The statements all agree on one concept long accepted throughout the maritime industry—that there is a clear and distinct line of separation between stevedoring and marine terminal functions. The functional separation takes place at the point of rest where control and responsibility for the cargo is transferred between the stevedore and the marine terminal operator. Labor contracts change at the point of rest as does the interest for whom the services are performed. It is at this line, then, the point of rest, at which the coverage of the federal Longshoremen's and Harbor Workers' Compensation Act commences and terminates.

NORTH ATLANTIC

BALTIMORE, MARYLAND

Baltimore, Md.

Dundalk Marine Terminal—Owned by the Maryland Port Administration of the Maryland Department of Transportation. We operate under lease arrangement at Shed #4 for our bulk cargo operation and also lease storage area for our container operation. Stevedoring is performed to or from "point of rest" and this holds true whether break bulk or containers. Terminal labor does not interchange with ship labor. Clerks and Checkers are hired each day specifically for ship or terminal and do not interchange on that same day. Gearmen and Mechanics could work on the vessel and the terminal at the same day. Truckloading/Unloading is performed by longshoremen hired as terminal labor, however Railroad Car Loading/Unloading labor is hired from Local 1429 which is separate and distinct from shipworkers (longshoremen). Maintenance of mechanical equipment is performed in our own shop approximately 300 feet from transit shed.

NORTH ATLANTIC

BOSTON

A. At the Port of Boston, the Massachusetts Port Authority own all breakbulk cargo and container berth facilities with exception of the Boston Army Base, which is leased by them from the United States Government. The Massachusetts Port Authority sublease the Boston Army Base to Port Terminal, Inc., who maintain the physical berth areas and also operate public warehouse sheds at this facility.

B. The breakbulk terminal facilities in the Port of Boston are as follows:

1. Pier 1, East Boston, is a three berth breakbulk general cargo terminal, which is owned by the Massachusetts Port Authority. The Massachusetts Port Authority collects dockage, wharfage and usage charges and maintains this terminal and in addition their employees, who are non deepwater I.L.A. labor, perform the railcar loading and unloading of import and export waterborne cargoes at this facility. I.T.O. Corporation of New England perform stevedoring and terminal services, including clerking, checking, dockwatching, coopering, delivery and receiving of cargo and the stripping and stuffing of containers at this facility.

2. Boston Army Base is a ten berth breakbulk general cargo terminal, which is leased from the United States Government by the Massachusetts Port Authority, who in turn, sublease this facility to Port Terminals, Inc. Port Terminals, Inc. collects dockage, wharfage and usage charges and maintains this terminal and in addition their employees, who are non I.L.A. deepwater labor, perform the railcar loading and unloading of waterborne import and export cargoes. Port Terminals also operate public warehousing sheds at this facility and perform the railcar loading and unloading of domestic cargoes. John T. Clark and Son of Boston, Inc. perform stevedoring and terminal services, including clerking, checking, dockwatching, coopering, delivery and receiving of cargo and also the stripping and stuffing of container cargoes at this facility.

3. Castle Island Terminal is six berth breakbulk general cargo terminal, which is owned by the Massachusetts Port Authority. The Massachusetts Port Authority collects dockage, wharfage and usage charges and in addition their employees, who are non I.L.A. deep-

water labor, perform railcar loading and unloading of import and export waterborne cargoes at this facility. I.T.O. Corporation of New England, John T. Clark and Son of Boston, Inc. and Terminal Services (Boston), Inc. all perform stevedoring and terminal services at the Castle Island Terminal.

4. It is interesting to note in connection with the subject in reference that all of the above-mentioned breakbulk general cargo facilities truck loading and unloading by I.L.A. deepwater labor is not a mandatory work practice or procedure. The truck loading and unloading of import and export waterborne cargo, which basically is the same work procedure of stripping and stuffing of container cargo, has been performed historically by teamster truck driver labor or independent trucking operators. The teamster truck driver labor bring their own forklift trucks to the pier or rent a forklift truck at the pier from a equipment rental company. The teamster truck drivers operate the forklift trucks and in the case of import cargo transport the cargo from the "point-of-rest" in the pier shed to their trucks where they physically load the cargo into the trucks and in the case of export cargo the teamster truck driver labor physically unload cargo from their trucks and transport same by forklift truck to the "point-of-rest" inside the pier shed. I.L.A. truck loading and unloading services are available on a voluntary basis at all breakbulk general cargo berths, however, through historical customs and practice, teamster truck driver labor perform nearly all truck loading and unloading services at general cargo piers.

5. The stevedoring and terminal functions connected with the discharging and loading of waterborne cargoes are two separate and distinct work areas. The stevedoring function covers the physical loading and unloading of cargo to or from a vessel. In the case of a

vessel loading operation, it includes the removal of cargo from "point-of-rest" on pier and transporting same to the end of ship's tackle on the dock, where cargo is hoisted onboard and stowed within vessels' holds, and in the case of a vessel discharging operation, it includes the removal of cargo from stowage within the vessel's hold and hoisting same to the end of ship's tackle on the dock where it is transported to a "point-of-rest" within the shed. The stevedoring function on loading vessels commences at the "point-of-rest" and terminates with the stowage of the cargo on board the vessel and on discharging vessels commences with the removal of cargo from stowage on board the vessel and terminates with the placing of the cargo at the "point-of-rest" on the dock.

6. The terminal function in connection with export or loading cargo commences with the receiving of cargo from trucks or railcars and terminates when the cargo is brought to a "point-of-rest" within the shed in connection with import or discharging cargo commences with the removal of the cargo from the "point-of-rest" when delivered to trucks or railcars.

C. Under union labor contract provisions, terminal workers cannot be employed for vessel loading and discharging operations but rather separate vessel labor namely longshoremen gangs and hatch checkers are employed for vessel operation independently of terminal labor.

D. Separate payrolls are maintained for vessel workers, (longshoremen), who are employed to load export cargoes from "point-of-rest" on dock into vessels and to discharge import cargoes from vessel to a "point-of-rest" on dock and for terminal labor, who are employed to receive export cargo from trucks or railcars to a "point-of-rest" on dock and deliver import cargo from "point-of-rest" on dock to trucks or railcars.

E. Maintenance or gearmen work primarily on the terminal and while they may be assigned to a specific vessel during cargo operations, their principal function is to lay out gear on the dock for use by longshoremen gangs employed for vessel loading and discharging operations.

F. Equipment maintenance is performed in special gear rooms, which are usually situated outside of the physical pier cargo working areas.

G. Vessel cargo checkers are employed for vessel work only and cannot be used as terminal or warehouse checkers on the same day. The only exception to this mandatory work rule would be on a full employment day, if, there was a shortage of terminal checkers, and a vessel finished prior to 5:00 P.M., the hatch checkers could then be used as terminal checkers, which occurrence would be out of the ordinary circumstance at this port.

H. The truck loading and unloading of breakbulk general cargoes is performed primarily by teamster trucking company labor and railcar loading and unloading is performed by warehouse (non I.L.A. deepwater labor). The information outlined in the aforementioned Paragraphs B1, 2, 3 and 4 explain in detail truck and railcar loading and unloading labor procedures currently in effect at this port.

I. The container terminal facilities at this port are as follows:

1. John F. Moran Container Terminal is owned by the Massachusetts Port Authority, who employ Bernard S. Costello, Inc. to perform stevedoring and terminal services at this container facility.

2. Sea-Land Terminal, Castle Island, is owned by the Massachusetts Port Authority and leased to Sea-Land Service, Inc., who employ John T. Clark and Son of

Boston, Inc. to perform stevedoring and terminal services at this container facility.

Stevedoring and terminal operations, both for breakbulk and container vessels, are separate and distinct work functions. The stevedoring work function for both breakbulk and container vessels is performed by longshoremen gangs, who are employed for vessel work *ONLY* on a daily basis with a four (4) hour minimum wage guarantee. The longshoremen gangs in the case of loading export cargo remove the breakbulk or containerized cargo from the "point-of-rest" in the shed or container yard and transport same to the end of ship's tackle where it is hoisted on board by ship's gear or container crane and stowed in the vessel's holds and in the case of discharging import cargo the longshoremen gangs remove the breakbulk or containerized cargo from stowage within the vessel's holds and hoist same out of the vessel by ship's gear or container crane to the end of ship's or crane tackle, where it is then transported to the "point-of-rest" within the shed or container storage yard. The terminal work function in the case of export cargo covers the receiving of breakbulk or containerized cargo, usually several days prior to vessel's operation, and placing same to a "point-of-rest" in a shed or container yard storage area and in the case of import cargo covers the delivery of breakbulk or containerized cargo, usually several days after vessel's operations have been completed, from the "point-of-rest" within the shed or container yard storage area. The longshoremen gang vessel operational functions and terminal labor operational functions are maintained on separate payrolls.

NORTH ATLANTIC PORTS

BRIDGEPORT, CONNECTICUT

A. Port area—Bridgeport, Connecticut

B. We own and operate the only deep water, dry cargo terminal in the port and perform both the terminal (warehouse) operations and the stevedoring operations.

C. We have 2 contracts with I.L.A. Local 1398—one covering terminal workers who perform terminal functions, the other covering longshoremen who perform the stevedoring function. The latter contract matches identically with regard to rates, and closely with regard to other conditions, the Atlantic Coast master contract. The terminal workers' contract varies considerably. The terminal workers can, and sometimes do, work on vessels. The reverse rarely, if ever, happens.

D. Separate payrolls are maintained.

E. Maintenance or gearmen would very likely work both on the vessel and the terminal on the same day.

F. Equipment maintenance performed in the garage/gear shed on the terminal.

G. Vessel cargo checkers are longshoremen and are not employed as terminal checkers. Occasionally, terminal checkers do work as vessel checkers when a vessel is in port.

H. Truck and carloading is performed by our regularly employed terminal workers. We maintain a steady labor force to handle this work.

Generally speaking, our operation fits the statement made in the next to the last paragraph of your memorandum.

The longshoremen perform all work on the vessel and the movement of the cargo to its point of rest (or "second point of rest" if you will). The terminal workers function is the delivery of the cargo to the consignee, i.e., truckloading. This holds true in the case of steel cargoes and other bulk cargoes with which we are concerned. Lumber is an exception. In this case, the custom has been that the longshoremens' function ends at the end of ship's tackle. The operation of the machines transporting it to the piling area and the piling are terminal workers' functions.

I trust the above is responsive to your request. If you have any further questions I would be pleased to hear from you.

NORTH ATLANTIC

CAMDEN, NEW JERSEY

Port of Camden, New Jersey

(1) *Broadway Terminal*—We operate at this terminal under a lease arrangement with the South Jersey Port Corporation, an agency of the State of New Jersey. Our operation consists of providing stevedoring and terminal services to various steamship companies under separate contract. Stevedoring ceases at "point of rest" and there is no interchange of workers from ship to terminal or vice-versa. Terminal labor is secured from ILA local (1332) which is separate and distinct from ship workers. Separate payrolls are maintained but only for insurance purposes. Gearmen and/or mechanics do not, as a general rule, go aboard ship. There could be exceptions to this as in the case of setting up exhaust blowers, night lights, minor fork lift repairs (if being used in vessel) etc.

However normal gear and machinery maintenance is accomplished in a building some 125 feet from ship side. Cargo checkers would perform a dual function in any one day if in the event a vessel finished by noontime and the checkers were reassigned to terminal work in the afternoon. Truck and car loading/unloading is performed by separate labor from Local 1332 (as mentioned above).

(2) *Camden Marine Terminal (Beckett St.)*—This terminal is owned by the South Jersey Port Corporation and they perform all terminal services except clerking and checking. Terminal workers are state employees and work directly for South Jersey Port Corp. We perform stevedoring, clerking and checking on a ship to ship basis and there is no interchange of longshore workers from ship to terminal. Checkers, however, could perform a dual service under similar circumstances as mentioned in (1) above. Gearmen and Mechanics also operate similarly as (1) above except that we provide a truck in the vicinity of the ship berth as a base for minor repairs.

NORTH ATLANTIC PORTS

HAMPTON ROADS/PORTSMOUTH, VA.

Hampton Roads/Portsmouth, Va.

Portsmouth Marine Terminal—This terminal, located in Portsmouth, Va. is owned by The Virginia Port Authority and leased to Portsmouth Terminals, Inc. for operation as a public pier which is basically a container facility accommodating full and partial container vessels, roll-on roll-off vessels (Ro-Ro) and U/B Automobile vessels. Only a token amount of

break-bulk business is handled since there are no transit sheds available for this purpose. The vessels which we stevedore at this terminal, both Container and Ro-Ro, follow the "point of rest" theory. Terminal services are provided exclusively by Portsmouth Terminals, Inc. under charges, rules and regulations as published in Norfolk Marine Terminal Association Tariff No. 1-C (FMC-T-No. 4). In this connection we wish to mention that we provide the labor for Portsmouth Terminals, Inc. under a separate agreement although we have no hand in billing or receiving revenues for any of the terminal services provided. Our reason for pointing this out is to highlight the labor division indigenous to this area, i.e. longshoremen and checkers that work on vessels or deep-sea activities and shortshoremen and shortshore checkers who are confined to handling/checking all cargoes moving to or from the terminal via inland conveyances. Stuffing and stripping containers as well as checking same is performed by longshoremen (deep-sea) and longshore checkers even though this work is considered part of the terminal operation. It is possible, though not probable, that longshore checkers could work on a vessel and also work on stripping and stuffing containers on the same day. Insofar as gearmen and mechanics are concerned it is highly likely that on Ro-Ro vessels they could work on both vessel and terminal on the same day due to the nature of the gear and mechanical equipment involved both on and off the vessel. This is not apt to be the case on container vessels. Equipment maintenance is performed in our own shop located approximately one-quarter mile from ship side.

(a) Our stevedoring operations are confined to the Port of Hampton Roads.

(b) We operate at the following terminals:

(1) Norfolk International Terminals owned by Virginia Port Authority and operated by Maritime Terminals, Inc.

(2) Lamberts Point Docks and Sewells Point Division of Lamberts Point Docks, Inc. owned by Virginia Port Authority and operated by Lamberts Point Docks, Inc.

(3) Portsmouth Marine Terminals owned by Virginia Port Authority and operated by Portsmouth Terminals, Inc.

(4) Chesapeake and Ohio Railway Terminals owned by Virginia Port Authority, Piers "2", "B" and "C" are operated by the Chesapeake and Ohio Railway Co. and Pier "8" is operated by Tidewater Stevedoring Corp.

We take cargo from the ship's berth usually on the pier floor adjacent, and between 100 feet forward of the bow and 100 feet aft of the stern of the ship. From this point of rest, we load into ships. On discharging operations it is the reverse. We discharge to pier floor between 100 feet forward of bow and 100 feet aft of stern. Should there not be sufficient space in this area for all of the cargo, we use additional longshoremen to haul to or from the point of rest nearest to the above limits. Our longshoremen do not discharge the cargo from cars or trucks and place on pier floor as this is done by the terminal operators using terminal labor. Also, we do not take cargo that we have discharged to the pier floor and load into cars or trucks, as this too is a terminal function.

As regards to container operations, we take containers from a marshalling area and haul them to ship's side for loading. We, also, haul discharged containers to marshalling areas.

In this port, stevedoring companies do stuff and strip containers at designated areas on the terminal using longshoremen for this operation at all terminals except Portsmouth Terminals, Inc.

(c) As a jurisdictional matter, our labor contracts will not permit longshoremen to perform terminal work and vice versa.

(d) Terminal operators maintain separate payrolls for their men and we maintain separate payrolls for stevedoring.

(e) Our maintenance and gearmen work exclusively in conjunction with our stevedoring operation and perform no terminal oriented work.

(f) Equipment maintenance is performed in gear rooms at the various terminals, but usually not adjacent to piers.

(g) Cargo checkers and terminal checkers respect each others jurisdiction and as such are not interchangeable in a given day.

(f) Car and truck loading/unloading is performed by the terminal operators using terminal men employed by them.

NORTH ATLANTIC

RHODE ISLAND

Providence—Rhode Island

Municipal Wharf, Fields Point—This terminal consists of six berths and is owned and operated by the City of Providence. We perform stevedoring, clerking and checking on a ship to ship basis. We do not perform terminal services since truck loading/unloading is accomplished by the truckmen. Clerking

and checking is an ILA function, however, and we do provide this service for receiving/delivery of cargo. It is possible, although not probable, that cargo checkers also would be required to work as terminal checkers on the same day. Gearmen generally work on the pier although they could be required to go on board ship to hook-up blowers, night lights etc. Mechanics and equipment maintenance is provided by an outside contractor located in East Providence.

Portsmouth—Rhode Island

Atlantic Terminals—This is a privately owned terminal engaged exclusively in the handling of lumber and lumber products. We perform stevedoring to end of ship's tackle at which point Atlantic Terminal labor removes the cargo to point of rest in the warehouse. We perform clerking and checking services only while vessel is discharging. Gearmen and mechanics are handled in the same way as in Providence.

U. S. Naval Construction Battalion Center—Davisville Rhode Island Pier 1 & 2—These piers are operated by the U. S. Navy. We provide stevedoring services and clerking/checking while vessel is being worked. All terminal work is performed by Civil Service employees. We provide a gearman but no mechanics since all mechanical equipment is owned by the U. S. Navy. However we do provide the labor to operate the equipment.

NORTH ATLANTIC

PORT OF NEW YORK

a) Port of New York—includes Manhattan, Brooklyn, Staten Island, Port Newark, Port Elizabeth, Hoboken, Jersey City, Bayonne and Weehawken.

b) Terminal facilities—most are owned by the New York-New Jersey Port Authority or the City of New York and are leased directly to a steamship company or a terminal operator. In many instances a steamship company will lease the facility and will engage a terminal operator for both the stevedoring and terminal function. In other cases a company will be employed to perform stevedoring function while the terminal operations will be performed by a different company. The stevedoring company's function is between the vessel and a place of rest with the terminal function taking over from that point.

c) Union contracts call for the hiring of labor by category i.e. terminal labor, drivers, ship labor, checker, coopers, maintenance, mechanics, etc. A man cannot be hired for terminal labor and be assigned to work on a vessel or vice versa.

d) Separate allocations of payrolls are made for vessel and terminal operations even when handled by the same company. Such a difference is necessary also for cost analysis as in most cases rates are quoted on a separate basis.

e) Maintenance or gearmen could necessarily work on a vessel and on the terminal the same day. Their need for ship work would be specific however and easily defined.

f) Equipment maintenance is performed at pier garages and/or at main garages away from the waterfront facility. Mechanics duties would not necessitate there going aboard a vessel.

g) Cargo checkers could be utilized in both vessel and terminal operations during the same day when performed by the same contractor. It is normal, however, for a checker to spend a full day in either operation without shifting. When performing in both functions each area is easily defined.

h) Truck and car loading and unloading is performed by longshoremen and drivers with terminal labor category. They are employed by the company performing the terminal labor services.

Historically our industry in New York has been divided into two segments—Stevedoring and Terminal operations. Prior to the Waterfront Commission, truck loading and unloading was done by Public Loaders and vessel operations performed by contract stevedores. Their functions were distinct and separate. After the demise of the Public Loaders, the majority of large steamship companies performed their own terminal operations while vessel work remained with the contract stevedore. Most stevedoring companies then assumed the role of terminal operator in the servicing of their various accounts. It was not then and still is not unusual today, however, to have two different contractors (stevedoring and terminal) servicing a steamship company on the same facility.

As previously mentioned there is a clear distinction between the function of a stevedore and terminal operator in the Port of New York. The stevedores responsibility lies in the handling of cargo between the ship and the "point of rest" as defined by the Federal Maritime Commission in its General Order 15. All other services are handled by the terminal operator. Labor is specifically hired by category and is allocated and shown to be utilized in either the stevedoring or terminal function by the operator. There is a clear definition between the two operations and as such, should not be confused or questioned.

SOUTH ATLANTIC

CHARLESTON, SOUTH CAROLINA

1. Marine terminal facilities in the port of Charleston are owned by the South Carolina State Port Authority which operates all terminal and warehouse facilities using labor employed and paid by the port authority.

2. All truck and rail car loading and unloading is performed by state employees, and not by longshoremen.

3. Contract stevedores employ longshoremen to load and unload vessels in the port, and their activities are generally confined to the pier area immediately adjacent the vessel which extends in an area 100′ from the bow of the vessel, outwardly approximately 300′, and to a point 100′ from the stearn of the vessel.

4. For import cargo the stevedore unloads the vessel and places the cargo within the above defined area. The stevedore using longshore labor then moves the cargo to a transit shed or open storage area as designated by the port authority. Any further handling of the cargo is done by terminal workers employed by the state port authority. For export cargo, the procedure is reversed.

5. For import containerized cargoes the stevedore unloads the container and moves it to a place on the pier, called a "holding area". The state port authority receives the cargo from the stevedore at that point, and is responsible for all further handling, except stripping the container. Export containers are received by the port authority and placed in the "holding area". The stevedore receives the container from the port authority at the holding area and loads it onto the vessel.

6. If a container is to be stripped on terminal facility, it is moved, after remaining in the holding area, by longshore labor to the port authority transit shed. Longshore labor strip the container of its contents, and place the empty container back in the holding area. The cargo removed from the container is received by the port authority which is responsible for any further handling.

7. State port authority employees are not permitted to load or unload vessels, and longshoremen are not permitted to engage in terminal operations, truck and rail car loading/unloading, or maintenance of port authority equipment.

SOUTH ATLANTIC

GEORGETOWN, SOUTH CAROLINA

Georgetown, South Carolina

a. There are three facilities:

   1. International Paper Company private facilities,

   2. South Carolina State Port Authority pier,

   3. Georgetown Steel Corporation's pier.

b. At all three facilities the stevedoring functions stop at the "point-of-rest". At the International Paper Company facilities, the Paper Company delivers to the warehouse. South Carolina State Port pier have the State Port Warehousemen deliver to the warehouse. At the Georgetown Steel pier, employees of Georgetown Steel Corporation (steel workers) deliver to the dock.

c. From the above, you will note that separate unions and/or employees are involved in delivering to the warehouse or pier, with the Longshoremen only being concerned with loading from the "point-of-rest".

d. Separate payrolls are maintained.

e. Maintenance is performed by outside contractors.

vessel loading operation, it includes the removal of cargo from "point-of-rest" on pier and transporting same to the end of ship's tackle on the dock, where cargo is hoisted onboard and stowed within vessels' holds, and in the case of a vessel discharging operation, it includes the removal of cargo from stowage within the vessel's hold and hoisting same to the end of ship's tackle on the dock where it is transported to a "point-of-rest" within the shed. The stevedoring function on loading vessels commences at the "point-of-rest" and terminates with the stowage of the cargo on board the vessel and on discharging vessels commences with the removal of cargo from stowage on board the vessel and terminates with the placing of the cargo at the "point-of-rest" on the dock.

6. The terminal function in connection with export or loading cargo commences with the receiving of cargo from trucks or railcars and terminates when the cargo is brought to a "point-of-rest" within the shed in connection with import or discharging cargo commences with the removal of the cargo from the "point-of-rest" when delivered to trucks or railcars.

C. Under union labor contract provisions, terminal workers cannot be employed for vessel loading and discharging operations but rather separate vessel labor namely longshoremen gangs and hatch checkers are employed for vessel operation independently of terminal labor.

D. Separate payrolls are maintained for vessel workers, (longshoremen), who are employed to load export cargoes from "point-of-rest" on dock into vessels and to discharge import cargoes from vessel to a "point-of-rest" on dock and for terminal labor, who are employed to receive export cargo from trucks or railcars to a "point-of-rest" on dock and deliver import cargo from "point-of-rest" on dock to trucks or railcars.

E. Maintenance or gearmen work primarily on the terminal and while they may be assigned to a specific vessel during cargo operations, their principal function is to lay out gear on the dock for use by longshoremen gangs employed for vessel loading and discharging operations.

F. Equipment maintenance is performed in special gear rooms, which are usually situated outside of the physical pier cargo working areas.

G. Vessel cargo checkers are employed for vessel work only and cannot be used as terminal or warehouse checkers on the same day. The only exception to this mandatory work rule would be on a full employment day, if, there was a shortage of terminal checkers, and a vessel finished prior to 5:00 P.M., the hatch checkers could then be used as terminal checkers, which occurrence would be out of the ordinary circumstance at this port.

H. The truck loading and unloading of breakbulk general cargoes is performed primarily by teamster trucking company labor and railcar loading and unloading is performed by warehouse (non I.L.A. deepwater labor). The information outlined in the aforementioned Paragraphs B1, 2, 3 and 4 explain in detail truck and railcar loading and unloading labor procedures currently in effect at this port.

I. The container terminal facilities at this port are as follows:

1. John F. Moran Container Terminal is owned by the Massachusetts Port Authority, who employ Bernard S. Costello, Inc. to perform stevedoring and terminal services at this container facility.

2. Sea-Land Terminal, Castle Island, is owned by the Massachusetts Port Authority and leased to Sea-Land Service, Inc., who employ John T. Clark and Son of

Boston, Inc. to perform stevedoring and terminal services at this container facility.

Stevedoring and terminal operations, both for breakbulk and container vessels, are separate and distinct work functions. The stevedoring work function for both breakbulk and container vessels is performed by longshoremen gangs, who are employed for vessel work *ONLY* on a daily basis with a four (4) hour minimum wage guarantee. The longshoremen gangs in the case of loading export cargo remove the breakbulk or containerized cargo from the "point-of-rest" in the shed or container yard and transport same to the end of ship's tackle where it is hoisted on board by ship's gear or container crane and stowed in the vessel's holds and in the case of discharging import cargo the longshoremen gangs remove the breakbulk or containerized cargo from stowage within the vessel's holds and hoist same out of the vessel by ship's gear or container crane to the end of ship's or crane tackle, where it is then transported to the "point-of-rest" within the shed or container storage yard. The terminal work function in the case of export cargo covers the receiving of breakbulk or containerized cargo, usually several days prior to vessel's operation, and placing same to a "point-of-rest" in a shed or container yard storage area and in the case of import cargo covers the delivery of breakbulk or containerized cargo, usually several days after vessel's operations have been completed, from the "point-of-rest" within the shed or container yard storage area. The longshoremen gang vessel operational functions and terminal labor operational functions are maintained on separate payrolls.

NORTH ATLANTIC PORTS

BRIDGEPORT, CONNECTICUT

A. Port area—Bridgeport, Connecticut

B. We own and operate the only deep water, dry cargo terminal in the port and perform both the terminal (warehouse) operations and the stevedoring operations.

C. We have 2 contracts with I.L.A. Local 1398—one covering terminal workers who perform terminal functions, the other covering longshoremen who perform the stevedoring function. The latter contract matches identically with regard to rates, and closely with regard to other conditions, the Atlantic Coast master contract. The terminal workers' contract varies considerably. The terminal workers can, and sometimes do, work on vessels. The reverse rarely, if ever, happens.

D. Separate payrolls are maintained.

E. Maintenance or gearmen would very likely work both on the vessel and the terminal on the same day.

F. Equipment maintenance performed in the garage/gear shed on the terminal.

G. Vessel cargo checkers are longshoremen and are not employed as terminal checkers. Occasionally, terminal checkers do work as vessel checkers when a vessel is in port.

H. Truck and carloading is performed by our regularly employed terminal workers. We maintain a steady labor force to handle this work.

Generally speaking, our operation fits the statement made in the next to the last paragraph of your memorandum.

The longshoremen perform all work on the vessel and the movement of the cargo to its point of rest (or "second point of rest" if you will). The terminal workers function is the delivery of the cargo to the consignee, i.e., truckloading. This holds true in the case of steel cargoes and other bulk cargoes with which we are concerned. Lumber is an exception. In this case, the custom has been that the longshoremens' function ends at the end of ship's tackle. The operation of the machines transporting it to the piling area and the piling are terminal workers' functions.

I trust the above is responsive to your request. If you have any further questions I would be pleased to hear from you.

NORTH ATLANTIC

CAMDEN, NEW JERSEY

Port of Camden, New Jersey

(1) *Broadway Terminal*—We operate at this terminal under a lease arrangement with the South Jersey Port Corporation, an agency of the State of New Jersey. Our operation consists of providing stevedoring and terminal services to various steamship companies under separate contract. Stevedoring ceases at "point of rest" and there is no interchange of workers from ship to terminal or vice-versa. Terminal labor is secured from ILA local (1332) which is separate and distinct from ship workers. Separate payrolls are maintained but only for insurance purposes. Gearmen and/or mechanics do not, as a general rule, go aboard ship. There could be exceptions to this as in the case of setting up exhaust blowers, night lights, minor fork lift repairs (if being used in vessel) etc.

However normal gear and machinery maintenance is accomplished in a building some 125 feet from ship side. Cargo checkers would perform a dual function in any one day if in the event a vessel finished by noontime and the checkers were reassigned to terminal work in the afternoon. Truck and car loading/unloading is performed by separate labor from Local 1332 (as mentioned above).

(2) *Camden Marine Terminal (Beckett St.)*—This terminal is owned by the South Jersey Port Corporation and they perform all terminal services except clerking and checking. Terminal workers are state employees and work directly for South Jersey Port Corp. We perform stevedoring, clerking and checking on a ship to ship basis and there is no interchange of longshore workers from ship to terminal. Checkers, however, could perform a dual service under similar circumstances as mentioned in (1) above. Gearmen and Mechanics also operate similarly as (1) above except that we provide a truck in the vicinity of the ship berth as a base for minor repairs.

NORTH ATLANTIC PORTS

HAMPTON ROADS/PORTSMOUTH, VA.

Hampton Roads/Portsmouth, Va.

Portsmouth Marine Terminal—This terminal, located in Portsmouth, Va. is owned by The Virginia Port Authority and leased to Portsmouth Terminals, Inc. for operation as a public pier which is basically a container facility accommodating full and partial container vessels, roll-on roll-off vessels (Ro-Ro) and U/B Automobile vessels. Only a token amount of

break-bulk business is handled since there are no transit sheds available for this purpose. The vessels which we stevedore at this terminal, both Container and Ro-Ro, follow the "point of rest" theory. Terminal services are provided exclusively by Portsmouth Terminals, Inc. under charges, rules and regulations as published in Norfolk Marine Terminal Association Tariff No. 1-C (FMC-T-No. 4). In this connection we wish to mention that we provide the labor for Portsmouth Terminals, Inc. under a separate agreement although we have no hand in billing or receiving revenues for any of the terminal services provided. Our reason for pointing this out is to highlight the labor division indigenous to this area, i.e. longshoremen and checkers that work on vessels or deep-sea activities and shortshoremen and shortshore checkers who are confined to handling/checking all cargoes moving to or from the terminal via inland conveyances. Stuffing and stripping containers as well as checking same is performed by longshoremen (deep-sea) and longshore checkers even though this work is considered part of the terminal operation. It is possible, though not probable, that longshore checkers could work on a vessel and also work on stripping and stuffing containers on the same day. Insofar as gearmen and mechanics are concerned it is highly likely that on Ro-Ro vessels they could work on both vessel and terminal on the same day due to the nature of the gear and mechanical equipment involved both on and off the vessel. This is not apt to be the case on container vessels. Equipment maintenance is performed in our own shop located approximately one-quarter mile from ship side.

(a) Our stevedoring operations are confined to the Port of Hampton Roads.

(b) We operate at the following terminals:

(1) Norfolk International Terminals owned by Virginia Port Authority and operated by Maritime Terminals, Inc.

(2) Lamberts Point Docks and Sewells Point Division of Lamberts Point Docks, Inc. owned by Virginia Port Authority and operated by Lamberts Point Docks, Inc.

(3) Portsmouth Marine Terminals owned by Virginia Port Authority and operated by Portsmouth Terminals, Inc.

(4) Chesapeake and Ohio Railway Terminals owned by Virginia Port Authority, Piers "2", "B" and "C" are operated by the Chesapeake and Ohio Railway Co. and Pier "8" is operated by Tidewater Stevedoring Corp.

We take cargo from the ship's berth usually on the pier floor adjacent, and between 100 feet forward of the bow and 100 feet aft of the stern of the ship. From this point of rest, we load into ships. On discharging operations it is the reverse. We discharge to pier floor between 100 feet forward of bow and 100 feet aft of stern. Should there not be sufficient space in this area for all of the cargo, we use additional longshoremen to haul to or from the point of rest nearest to the above limits. Our longshoremen do not discharge the cargo from cars or trucks and place on pier floor as this is done by the terminal operators using terminal labor. Also, we do not take cargo that we have discharged to the pier floor and load into cars or trucks, as this too is a terminal function.

As regards to container operations, we take containers from a marshalling area and haul them to ship's side for loading. We, also, haul discharged containers to marshalling areas.

In this port, stevedoring companies do stuff and strip containers at designated areas on the terminal using longshoremen for this operation at all terminals except Portsmouth Terminals, Inc.

(c) As a jurisdictional matter, our labor contracts will not permit longshoremen to perform terminal work and vice versa.

(d) Terminal operators maintain separate payrolls for their men and we maintain separate payrolls for stevedoring.

(e) Our maintenance and gearmen work exclusively in conjunction with our stevedoring operation and perform no terminal oriented work.

(f) Equipment maintenance is performed in gear rooms at the various terminals, but usually not adjacent to piers.

(g) Cargo checkers and terminal checkers respect each others jurisdiction and as such are not interchangeable in a given day.

(f) Car and truck loading/unloading is performed by the terminal operators using terminal men employed by them.

NORTH ATLANTIC

RHODE ISLAND

Providence—Rhode Island

Municipal Wharf, Fields Point—This terminal consists of six berths and is owned and operated by the City of Providence. We perform stevedoring, clerking and checking on a ship to ship basis. We do not perform terminal services since truck loading/unloading is accomplished by the truckmen. Clerking

and checking is an ILA function, however, and we do provide this service for receiving/delivery of cargo. It is possible, although not probable, that cargo checkers also would be required to work as terminal checkers on the same day. Gearmen generally work on the pier although they could be required to go on board ship to hook-up blowers, night lights etc. Mechanics and equipment maintenance is provided by an outside contractor located in East Providence.

Portsmouth—Rhode Island

Atlantic Terminals—This is a privately owned terminal engaged exclusively in the handling of lumber and lumber products. We perform stevedoring to end of ship's tackle at which point Atlantic Terminal labor removes the cargo to point of rest in the warehouse. We perform clerking and checking services only while vessel is discharging. Gearmen and mechanics are handled in the same way as in Providence.

U. S. Naval Construction Battalion Center—Davisville Rhode Island Pier 1 & 2—These piers are operated by the U. S. Navy. We provide stevedoring services and clerking/checking while vessel is being worked. All terminal work is performed by Civil Service employees. We provide a gearman but no mechanics since all mechanical equipment is owned by the U. S. Navy. However we do provide the labor to operate the equipment.

NORTH ATLANTIC

PORT OF NEW YORK

a) Port of New York—includes Manhattan, Brooklyn, Staten Island, Port Newark, Port Elizabeth, Hoboken, Jersey City, Bayonne and Weehawken.

b) Terminal facilities—most are owned by the New York-New Jersey Port Authority or the City of New York and are leased directly to a steamship company or a terminal operator. In many instances a steamship company will lease the facility and will engage a terminal operator for both the stevedoring and terminal function. In other cases a company will be employed to perform stevedoring function while the terminal operations will be performed by a different company. The stevedoring company's function is between the vessel and a place of rest with the terminal function taking over from that point.

c) Union contracts call for the hiring of labor by category i.e. terminal labor, drivers, ship labor, checker, coopers, maintenance, mechanics, etc. A man cannot be hired for terminal labor and be assigned to work on a vessel or vice versa.

d) Separate allocations of payrolls are made for vessel and terminal operations even when handled by the same company. Such a difference is necessary also for cost analysis as in most cases rates are quoted on a separate basis.

e) Maintenance or gearmen could necessarily work on a vessel and on the terminal the same day. Their need for ship work would be specific however and easily defined.

f) Equipment maintenance is performed at pier garages and/or at main garages away from the waterfront facility. Mechanics duties would not necessitate there going aboard a vessel.

g) Cargo checkers could be utilized in both vessel and terminal operations during the same day when performed by the same contractor. It is normal, however, for a checker to spend a full day in either operation without shifting. When performing in both functions each area is easily defined.

h) Truck and car loading and unloading is performed by longshoremen and drivers with terminal labor category. They are employed by the company performing the terminal labor services.

Historically our industry in New York has been divided into two segments—Stevedoring and Terminal operations. Prior to the Waterfront Commission, truck loading and unloading was done by Public Loaders and vessel operations performed by contract stevedores. Their functions were distinct and separate. After the demise of the Public Loaders, the majority of large steamship companies performed their own terminal operations while vessel work remained with the contract stevedore. Most stevedoring companies then assumed the role of terminal operator in the servicing of their various accounts. It was not then and still is not unusual today, however, to have two different contractors (stevedoring and terminal) servicing a steamship company on the same facility.

As previously mentioned there is a clear distinction between the function of a stevedore and terminal operator in the Port of New York. The stevedores responsibility lies in the handling of cargo between the ship and the "point of rest" as defined by the Federal Maritime Commission in its General Order 15. All other services are handled by the terminal operator. Labor is specifically hired by category and is allocated and shown to be utilized in either the stevedoring or terminal function by the operator. There is a clear definition between the two operations and as such, should not be confused or questioned.

SOUTH ATLANTIC

CHARLESTON, SOUTH CAROLINA

1. Marine terminal facilities in the port of Charleston are owned by the South Carolina State Port Authority which operates all terminal and warehouse facilities using labor employed and paid by the port authority.

2. All truck and rail car loading and unloading is performed by state employees, and not by longshoremen.

3. Contract stevedores employ longshoremen to load and unload vessels in the port, and their activities are generally confined to the pier area immediately adjacent the vessel which extends in an area 100′ from the bow of the vessel, outwardly approximately 300′, and to a point 100′ from the stearn of the vessel.

4. For import cargo the stevedore unloads the vessel and places the cargo within the above defined area. The stevedore using longshore labor then moves the cargo to a transit shed or open storage area as designated by the port authority. Any further handling of the cargo is done by terminal workers employed by the state port authority. For export cargo, the procedure is reversed.

5. For import containerized cargoes the stevedore unloads the container and moves it to a place on the pier, called a "holding area". The state port authority receives the cargo from the stevedore at that point, and is responsible for all further handling, except stripping the container. Export containers are received by the port authority and placed in the "holding area". The stevedore receives the container from the port authority at the holding area and loads it onto the vessel.

6. If a container is to be stripped on terminal facility, it is moved, after remaining in the holding area, by longshore labor to the port authority transit shed. Longshore labor strip the container of its contents, and place the empty container back in the holding area. The cargo removed from the container is received by the port authority which is responsible for any further handling.

7. State port authority employees are not permitted to load or unload vessels, and longshoremen are not permitted to engage in terminal operations, truck and rail car loading/unloading, or maintenance of port authority equipment.

SOUTH ATLANTIC

GEORGETOWN, SOUTH CAROLINA

Georgetown, South Carolina

a. There are three facilities:

   1. International Paper Company private facilities,

   2. South Carolina State Port Authority pier,

   3. Georgetown Steel Corporation's pier.

b. At all three facilities the stevedoring functions stop at the "point-of-rest". At the International Paper Company facilities, the Paper Company delivers to the warehouse. South Carolina State Port pier have the State Port Warehousemen deliver to the warehouse. At the Georgetown Steel pier, employees of Georgetown Steel Corporation (steel workers) deliver to the dock.

c. From the above, you will note that separate unions and/or employees are involved in delivering to the warehouse or pier, with the Longshoremen only being concerned with loading from the "point-of-rest".

d. Separate payrolls are maintained.

e. Maintenance is performed by outside contractors.

f. Equipment maintenance is performed at the garage adjacent to the pier.

g. Vessel Cargo Checkers can be terminal and warehouse checkers on the same day, however, under different payrolls and different collective bargaining agreements.

h. Generally, truck and car loading/unloading is performed by State Warehousemen at the South Carolina State Port Authority pier which is the only location this type of operation is performed. No containers are handled.

EAST COAST OF FLORIDA

JACKSONVILLE

1) *Port of Jacksonville, Florida*

2) *Terminal Facilities*

a) *Ownership*—Jacksonville Port Authority

b) *Leased or Assigned—By/To*—Jacksonville Port Authority performs all cargo terminal handling operations with the exception of the Blount Island Linerboard Warehouse now under lease to a private terminal company.

c) *Area of Stevedoring Operations*—Aboard ship to/from point of rest in transit shed and/or storage area.

d) *Area of Terminal Operations*—From point of rest in transit shed or open storage area to truck or rail car. Max. distance 500'.

3) *Union Contracts*

a) *Stevedoring*—ILA Local 1408

b) *Terminal*—ILA Local 1408A

c) *Clerking*—ILA Local 1593

d) *Mechanics*—Company personnel

4) *Payroll Practices*

Separate time sheets and payrolls are maintained for each operation whether it be ship board or warehouse/terminal.

5) *Maintenance and Gear*

Maintenance and/or gear men could be involved in shipboard as well as terminal operations during the same pay period.

6) *Checking*

Shipside as well as terminal clerks are employed under an eight hour guarantee. A man is employed either for shipside work or terminal work. Clerking operations can not be commingled.

7) *Truck Loading/Unloading Practices*

All work performed by Jacksonville Port Authority.

8) *Company Operations*

Companies operate only as contracting stevedores, do not engage in terminal operations.

9) *Contract Excerpts*

South Atlantic Deepsea Longshore Agreement —ILA

13(A)(1) Longshore work is to cover all labor used in connection with loading or discharging ships, barges or other floating craft. It will include men engaged in handling cargo to or from point of rest or to or from cars or trucks when handled direct to or from ships. It will include all operators of mechanical equipment

used in such operations, including cranes owned by stevedore contractors when qualified operators are available, provided, however, that this shall not require the Employers to alter any existing practices. When a stevedore contractor introduces new mechanical equipment he must endeavor to train men presently in the industry to operate such equipment. It will also cover sorting, coopering or reconditioning of cargo when performed in connection with stevedoring work; the handling of ships stores when not carried by hand up the gangway; the handling of baggage to and from ship's deck of passenger vessels; all mail; dunnaging (excluding bulk separations), rigging (excluding rigging for heavy lifts) and the following operations when vessel is alongside dock; cleaning of cargo area aboard ship, lashing and securing cargo and the fitting and dismantling of fittings. It will also include gearmen (not mechanics) when assigned to ships; the operation of permanently mounted shipboard cranes and winches, and the handling of lines when performed by stevedores. It also includes opening and closing of hatches on conventional type vessels with tween decks when working general cargo.

13(A)(2) The point of rest referred to in Clause 13(A) is defined as follows on general cargo:

(a) On cargo to be loaded aboard ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(b) On cargo to be discharged from ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is placed upon completion of discharge from ships.

(c) On cargo to be loaded aboard ships as well as discharged from ships, such cargo will not be considered to be at point of rest until complete carload or truckload lots are completely assembled.

(d) All provisions of this Clause shall apply to refrigerated cargo, but this Clause shall not be so literally or strictly construed as to endanger or risk spoilage of refrigerated cargo.

(e) On cargo other than bulk commodities landed directly from the vessel to trucks or rail cars for movement only within the terminal area to ground storage, the point of rest is that point within the terminal area where the cargo is grounded.

Contract Excerpts

Warehouse Contract—ILA

3-B It is distinctly understood and agreed that labor used between points of rest and the ship is considered Stevedore Labor, and is not covered under this agreement. Point of rest is defined as the point from which cargo moves direct to ship or vice versa whether it be Warehouse floor, Railway car or other vehicle.

11 The point of rest is defined as follows on general cargo:

(A) On cargo to be loaded aboard ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(B) On cargo to be discharged from ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is placed upon completion of discharge from ships.

(C) On cargo to be loaded aboard ships as well as cargo to be discharged from ships, such cargo shall not be considered to be at point of rest until complete carload or truckload lots are completely assembled.

(D) All provisions of this Clause shall apply to refrigerated cargo, but this Clause shall not be so literally or strictly construed as to endanger or risk spoilage of refrigerated cargo.

EAST COAST OF FLORIDA

MIAMI

1) *Port of Miami, Florida*

2) *Terminal Facilities*

a) *Ownership*—Metropolitan Dade County—Seaport Department

b) *Leased or Assigned—By/To*—Assigned warehouse space by Seaport Department to terminal operators. Leased open storage areas by Seaport to terminal operators.

c) *Area of Stevedoring Operations*—Aboard ship to/from point of rest in transit shed and/or storage area; maximum distance 500'.

d) *Area of Terminal Operations*—From point of rest in transit shed or open storage area to truck or rail car.

3) *Union Contracts*

a) *Stevedoring*—ILA Local 1416

b) *Terminal*—ILA Local 1416A

c) *Clerking*—ILA Local 1922

d) *Crane Operators and Mechanics*—International Union of Operating Engineers Local 487

4) *Payroll Practices*

Separate time sheets and payrolls are maintained for each operation whether it be ship board or warehouse/terminal.

5) *Maintenance and Gear*

Maintenance and/or gear men could be involved in shipboard as well as terminal operations during the same pay period.

6) *Checking*

Shipside as well as terminal clerks are employed under an eight hour guarantee. A man is employed either for shipside work or terminal work. Clerking operations can not be commingled.

7) *Truck Loading/Unloading Practices*

Terminal labor performs rail car loading/unloading. Truck drivers perform unloading/

unloading to/from tailgate. Terminal labor picks up/drops off cargo from/at tailgate.

8) *Company Operations*

All stevedoring companies also function as terminal operators. Port Authority does not perform any cargo handling services.

9) *Contract Excerpts*

Southeast Florida Deepsea Longshore Agreement—ILA

Longshore Work Defined, Gang Sizes, Employers Rights

13(A)(1) Longshore work is to cover all labor used in connection with loading or discharging ships, barges or other floating craft. It will include men engaged in handling cargo to or from point of rest or to or from cars or trucks when handled direct to or from ships. It will include all operators of mechanical equipment used in such operations, provided, however, that this shall not require the employers to alter any existing practices. It will also cover coopering or reconditioning of cargo when performed in connection with stevedoring work; the handling of ship's stores when not carried by hand up the gangway; the handling of baggage to and from ship's deck of passenger vessels; all mail; dunnaging (excluding bulk separations); rigging (excluding rigging for heavy lifts); and the following operations when vessel is along-side dock; cleaning of cargo areas aboard ship, lashing and unlashing and securing of cargo, and the fitting and dismantling of fittings. It will also include gearmen (not mechanics) when

assigned to ships; the operation of all permanently mounted shipboard cranes and winches; and the handling of lines when performed by stevedores. It also includes opening and closing of hatches on conventional type vessels with tween decks when working general cargo.

13(A)(2) The point of rest referred to in Clause 13(A)(1) is defined as follows on general cargo:

(a) On cargo to be loaded aboard ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(b) On cargo to be discharged from ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is placed upon completion of discharge from ships.

(c) On cargo to be loaded aboard ships as well as cargo to be discharged from ships, such cargo shall not be considered to be at point of rest until complete carload or truckload lots are completely assembled.

(d) All provisions of this Clause shall apply to refrigerated cargo, but this Clause shall not be so literally or strictly construed as to endanger or risk spoilage of refrigerated cargo.

Warehouse Contract—ILA

Warehouse Work

13(A) Warehouse work shall be defined to include handling of cargo in shipside warehouse/transit sheds and port areas, when such cargo

is not handled in conjunction with ships loading or discharging.

Warehouse work will include loading and discharging of railroad cars, loading and unloading of drop trailers and piggyback trailers; also the loading and unloading of trucks and trailers where the nature or weight of the cargo is such that this loading or unloading cannot be accomplished by driver, the employer will use I.L.A. labor to help the driver. Present port practices in Port Everglades to continue.

The number and classification of men to be assigned to any particular task to be wholly at the discretion of the employer, in consultation with the header. The Union has the privilege of bringing to the attention of the employer any suggestions or recommendations concerning labor requirements.

Specialized freight requiring special and/or expert handling may, at the discretion of the employer, to be handled by truckers or other qualified personnel. It is not the intention of the employers to displace ILA labor from work, but rather to protect the safety of the men and avoid liability in handling specialized equipment or freight. The ILA men so displaced will standby at the prevailing hourly rate of pay.

EAST COAST OF FLORIDA

PANAMA CITY, FLORIDA

Panama City, Florida

a. There are three facilities:
   1. International Paper Company facilities,
   2. City pier,
   3. Private terminal.

b. In all three facilities the stevedoring functions stop or begin at the "point-of-rest". At the International Paper Company's facility, their own employees deliver the cargo to the warehouse. At the City pier, their own employees deliver the cargo to the "point-of-rest". At the private terminal, Warehousemen deliver to the "point-of-rest".

c. As you can see, there is a clear division or allocation of the workers. Terminal workers cannot work on vessels and vice-versa.

d. Separate payrolls are maintained.

e. Maintenance or Gearmen do not work on the vessel on the same day or under the same collective bargaining agreement, except in the case of an emergency.

f. Equipment maintenance is performed in the garage adjacent to the pier.

g. Vessel Cargo Checkers cannot be terminal and warehouse checkers on the same day. There is an occasion when a man may work on two different jobs with his pay being maintained on two separate payrolls, however, they are two separate and distinct functions.

h. Depending upon the terminal, the work is either performed by the Paper Company, by the City, or terminal employees. No containers are handled.

EAST COAST OF FLORIDA

PORT EVERGLADES

1) *Port Everglades, Florida* (Fort Lauderdale/ Hollywood)

2) *Terminal Facilities*

a) *Ownership*—Port Everglades Authority

b) *Leased or Assigned—By/To*—Assigned warehouse and open storage space by Port Everglades Authority to franchised terminal operators.

c) *Area of Stevedoring Operations*—Aboard ship to/from point of rest in transit shed and/or storage area; maximum distance 1,000'.

d) *Area of Terminal Operations*—From point of rest in transit shed or open storage area to truck or rail car.

3) *Union Contracts*

a) *Stevedoring*—ILA Local 1526

b) *Terminal*—ILA Local 1526A

c) *Clerking*—ILA Local 1922

d) *Crane Operators and Mechanics*—International Union of Operating Engineers Local 675

4) *Payroll Practices*

Separate time sheets and payrolls are maintained for each operation whether it be ship board or warehouse/terminal.

5) *Maintenance and Gear*

Maintenance and/or gear men could be involved in shipboard as well as terminal operations during the same pay period.

6) *Checking*

Shipside as well as terminal clerks are employed under an eight hour guarantee. A man is employed either for shipside work or terminal work. Clerking operations can not be commingled.

7) *Truck Loading/Unloading Practices*

Terminal labor performs truck and rail car loading/unloading.

8) *Company Operations*

All stevedoring companies are franchised by the Port Everglades Authority. These companies also perform terminal operations. Port Everglades Authority does not engage in any cargo handling services.

9) *Contract Excerpts*

Southeast Florida Deepsea Longshore Agreement—ILA

Longshore Work Defined, Gang Sizes, Employers Rights

13(A)(1) Longshore work is to cover all labor used in connection with loading or discharging ships, barges or other floating craft. It will include men engaged in handling cargo to or from point of rest or to or from cars or trucks when handled direct to or from ships. It will include all operators of mechanical equipment used in such operations, provided, how-

ever, that this shall not require the employers to alter any existing practices. It will also cover coopering or reconditioning of cargo when performed in connection with stevedoring work; the handling of ship's stores when not carried by hand up the gangway; the handling of baggage to and from ship's deck of passenger vessels; all mail; dunnaging (excluding bulk separations), rigging (excluding rigging for heavy lifts); and the following operations when vessel is along-side dock; cleaning of cargo areas aboard ship, lashing and unlashing and securing of cargo, and the fitting and dismantling of fittings. It will also include gearmen (not mechanics) when assigned to ships; the operation of all permanently mounted shipboard cranes and winches; and the handling of lines when performed by stevedores. It also includes opening and closing of hatches on conventional type vessels with tween decks when working general cargo.

13(A)(2) The point of rest referred to in Clause 13 (A)(1) is defined as follows on general cargo:

(a) On cargo to be loaded aboard ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(b) On cargo to be discharged from ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is placed upon completion of discharge from ships.

(c) On cargo to be loaded aboard ships as well as cargo to be discharged from ships, such cargo shall not be considered to be at point of rest until complete carload or truckload lots are completely assembled.

(d) All provisions of this Clause shall apply to refrigerated cargo, but this Clause shall not be so literally or strictly construed as to endanger or risk spoilage of refrigerated cargo.

Warehouse Contract—ILA

Warehouse Work

13(A) Warehouse work shall be defined to include handling of cargo in shipside warehouse/transit sheds and port areas, when such cargo is not handled in conjunction with ships loading or discharging.

Warehouse work will include loading and discharging of railroad cars, loading and unloading of drop trailers and piggyback trailers; also the loading and unloading of trucks and trailers where the nature or weight of the cargo is such that this loading or unloading cannot be accomplished by driver, the employer will use I.L.A. labor to help the driver. Present port practices in Port Everglades to continue.

The number and classification of men to be assigned to any particular task to be wholly at the discretion of the employer, in consultation with the header. The Union has the privilege of bringing to the attention of the employer any suggestions or recommendations concerning labor requirements.

Specialized freight requiring special and/or expert handling may, at the discretion of the employer, to be handled by truckers or other qualified personnel. It is not the intention of the employers to displace ILA labor from work, but rather to protect the safety of the men and avoid liability in handling specialized equipment or freight. The ILA men so displaced will standby at the prevailing hourly rate of pay.

SOUTH ATLANTIC

SAVANNAH, GEORGIA

(a) *Port Area:* Consists of various terminals stretching about 10 miles along the Savannah River plus a LASH mooring at the mouth of the river.

(b) *Terminal Facilities:* Excluding particular companies' private facilities, there are three terminal operators handling dry cargo. East Coast Terminals operate a public terminal on land leased from the railroad, International Trading Corporation on their own land, and the Georgia Ports Authority on their own land at two locations: the Ocean Terminals and the Garden City Terminals. By far the majority of the work is done at Georgia Port Authority terminals which occupy some 900 acres of land. At all these terminals the terminal operator does not become involved with loading or unloading vessels, which is done by one of several contract stevedoring companies.

On general cargo the contract stevedore picks up cargo from its resting spot within a waterside transit shed or open berth and loads it to stowage in the vessel, or if discharging he removes the

cargo from its stowage in the vessel and places it by bill of lading lots in resting places in the transit shed or open berth. The Agent/Stevedore employs one or more clerks who receive cargo from the terminal for the vessel or deliver cargo from the vessel to the terminal. The vessel has no responsibility for outbound cargo until the Contract Stevedore picks it up to load to the vessel, and when discharging, the vessel responsibility ends when the Contract Stevedore places the cargo by lot in resting place.

On container cargo there is a slight difference in that the Agent/Stevedore also completes the interchange (TIR) documents between the vessel and land carrier, and stuffs or strips pier to pier containers in a shed about one-half mile from the container dock in space leased by the terminal to the vessel operator.

(c) Enclosed is a booklet detailing our current contracts with the Longshore Local and the Clerks and Checkers Local. Clause 13(A)(1) in both contracts (page 17 and 44 respectively) defines work jurisdiction. Terminal workers do not work on vessels and Longshoremen, Clerks or Checkers do not work beyond point of rest in the transit shed or open berth adjacent to the river except in connection with stuffing/stripping containers as described in (b) above.

(d) Separate payrolls are maintained.

(e) The Stevedore Contractors maintenance and gear men do work both on vessels and in the Contractor's shop facility on the same day.

(f) Equipment maintenance is primarily performed in the Stevedore Contractor's own shop which may be leased from a terminal operator or from others

outside the terminal facility. Minor repair work on the Contractor's equipment is also performed as necessary on the ship or on terminal space adjacent to the ship, but work is confined to the Stevedore Contractor's equipment and does not relate to the Terminal Operator's equipment.

(g) The vessel cargo Checkers are different people than those employed by the Terminal/Warehouse Operator.

(h) Truck and car loading/unloading is performed by the Terminal Operator with his own labor who are different people than those employed by the Contract Stevedore.

While the above seems involved, the basic therein is that the Contract Stevedore is not involved until he actually picks up cargo to load to a vessel or in discharging ends his involvement when the cargo is set down properly separated by lot immediately after removal from the vessel and placing under cover as necessary. Container operations vary in that pier to pier cargo is not considered at rest until the cargo is physically outside the container in the vessel operators own leased spaced.

SOUTH ATLANTIC

SUNNYPOINT, NORTH CAROLINA

1. Sunnypoint, North Carolina

   a. Military Ocean Terminal located on the Cape Fear River and is a Department of Defense explosives port facility.

   b. The facility is owned and operated as a sub-port of EAMTMTS under MTMTS, Department of the Army, U. S. Government. There are no commercial leasing arrangements with the Department

of the Army being the terminal operator. The stevedoring functions stop at the "point-of-rest". Because of the terminal being an explosive facility, in all cases this point is in the rail car or truck. The terminal operations are performed by I.L.A. members hired by the Stevedores under a separate and distinct collective bargaining agreement.

c. There is a great delineation between the Longshoremen's collective bargaining agreement and the Warehousemen's collective bargaining agreement, both in scope of work and wages. No man can work on either operation unless he is working under the applicable collective bargaining agreement.

d. Separate payrolls are maintained for vessel workers (Longshoremen) and terminal workers.

e. Maintenance or Gearmen do not work on the vessel and on the terminal the same day. They are covered by a separate I.L.A. Local.

f. Equipment Maintenance is performed at the maintenance shed approximately ½ mile from the pier.

g. Vessel Cargo Checkers cannot be terminal and warehouse checkers on the same day.

h. Generally speaking, the truck and rail cars are loaded and unloaded at ship side because of the nature of the terminal. In all cases this is the referred to "point-of-rest" and the work is performed by Longshoremen under the applicable collective bargaining agreement. There is some handling of cargo away from the pier, i.e., truck to rail car; rail car to rail car, with this work being performed by Warehoue Laborers under their collective bargaining agreement. Containers are

stuffed and stripped by I.L.A. Longshoremen under separate terms and conditions in the Longshore agreement. These containers are handled in an area approximately two miles from the pier and then taken to a parking area. At the time the vessel loads, then the Longshore Gang picks the containers up from this area and brings or takes them from ship side. There is no mingling of labor.

SOUTH ATLANTIC

WILMINGTON, NORTH CAROLINA

For clarification, "point-of-rest" as used in this letter shall mean "that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading".

(a) Stevedoring activities in the port of Morehead City are entirely within the State Port facilities where both break bulk and bulk materials are handled. In the port of Wilmington, stevedoring activities are performed at Sunny Point Army terminal (containerized and break bulk military cargoes), Almont Docks (bulk commodities only), and the State Docks (bulk, break bulk and containerized cargoes).

(b) The State Port Terminals are owned by the State of North Carolina and are operated by the Ports Authority which is an agency of the State. Compensation for terminal use is collected from wharfage charges assessed against the steamship line on containers and assessed against the cargo owners of break bulk shipments. The stevedoring

companies also pay a terminal use charge assessed against the general and break bulk cargoes handled. The stevedore functions at these terminals begin on board the vessels. From there the responsibilities move from the dock's edge to the point-of-rest in the transit shed or to the open dock space on the wharf immediately adjacent to the dock. This applies to break bulk shipments and the stevedore's responsibility ends at these points-of-rest. On container shipments, the stevedore's responsibility lies between the point-of-rest in the container yard immediately adjacent to the dock and the vessel. On bulk shipments, the stevedore responsibility encompasses all cargo handling activities on the vessel but they cease at the bottom of the hopper alongside the vessel. All cargo handling from the point-of-rest to other areas away from the vessel is done by terminal personnel in respect to break bulk shipments and by cargo owners in respect to imported bulk materials. Domestic truck lines handle all container movement inland from the point-of-rest.

(c) Stevedoring operators employ longshoremen for their work force. Clause 13(A)(1) of the current longshore agreement states that "Longshore work is to cover all labor used in connection with loading and discharging ships, barges or other floating craft. It will include men engaged in handling cargo to or from point-of-rest or to or from cars or trucks when handled direct to or from ships." Clause 13(A)(2) defines point-of-rest referred to in clause 13(A)(1) as follows on general cargo:

(a) On cargo to be loaded aboard ships, that point or place in the pier or wharf area

or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(b) On cargo to be discharged from ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is placed upon completion of discharge from ships.

Terminal workers are never permitted to work on vessels or between the point-of-rest and the vessel. Likewise, longshoremen are never permitted to work between the point-of-rest and the main gates of the terminals.

(d) Longshore payrolls are handled by the stevedore companies which employ the longshoremen. Terminal and warehouse workers are paid by the N. C. State Ports Authority.

(e) The State Ports Authority and the stevedoring companies each employ their own maintenance personnel and gearmen. The point-of-rest is the dividing line of each group's work jurisdiction and at no time do they work beyond these bounds. The State Ports maintenance personnel maintain their equipment and the stevedore maintenance people maintain the equipment belonging to their employers.

(f) Maintenance of the State Ports equipment is done in their own shop with their own personnel. The stevedoring companies also have their own shops for storing and maintaining their own equipment.

(g) The vessel cargo checkers work only in conjunction with the longshore work being performed. They are members of the International Long-

shoremen's Association and are governed by the work agreement they have negotiated with their employers. The terminal and warehouse checkers are employed by the State Ports Authority and at no time does their jurisdiction overstep the point-of-rest.

(h) Truck and car loading/unloading is done entirely by warehouse and terminal workers employed by the N. C. State Ports Authority unless those trucks and cars are being loaded/unloaded directly to or from the vessel.

2. Wilmington, North Carolina

a. Private port terminal handling bulk cargoes.

b. Privately owned by Almont Shipping Company, Inc. Stevedoring functions stop at the "point-of-rest" which is the bulk stockpile area adjacent to the ship's berth. In all cases, terminal employees are responsible for the operation and control of the belt conveyor systems.

c. Separate collective bargaining agreements between vessel workers and terminal workers. Terminal workers cannot work on the vessel and vice-versa.

d. Separate payrolls are maintained for vessel workers and terminal workers.

e. Maintenance and Gearmen are regular company employees, non-union, and they do not work on the vessel.

f. Equipment is maintained in the shop on the terminal. Emergency repairs may be accomplished on the vessel, however, generally, the machine is brought to the shop. These men are company employees and non-union.

g. There are no Cargo Checkers employed at this terminal.

h. Terminal or Warehouse Laborers perform the truck or car loading/unloading, they being employed by the company. No containers are handled.

GULF COAST

GULFPORT, MISSISSIPPI

Gulfport, Mississippi

a. State facility.

b. The stevedoring functions stop at the "point-of-rest". The Stevedores perform both the stevedoring and terminal functions under separate collective bargaining agreements.

c. There are separate collective bargaining agreements concerning the Stevedores and terminal workers. The terminal workers cannot work on vessels or vice-versa. They may on the same day complete one job and then hire out for another.

d. Separate payrolls are maintained.

e. Maintenance and Gearmen do not work on the vessel.

f. Equipment maintenance is performed in the garage adjacent to the pier.

g. Vessel Cargo Checkers cannot be a terminal or warehouse checker on the same day unless they complete one job and are rehired under a different agreement with different provisions.

h. The Stevedores perform the truck or car loading/unloading under the Warehousemen's agreement. No containers are handled.

GULF COAST

LAKE CHARLES, LOUISIANA

The Port of Lake Charles is a State Agency and the facilities are owned by the Lake Charles Harbor & Terminal District. The Port personnel only maintain the

facilities and perform no longshore or warehouse work on the waterfront, i.e. transit sheds. They do perform the loading and unloading of rail cars and trucks in the storage sheds which are behind the waterfront.

All car and truck loading and unloading on the waterfront, i.e. the transit sheds, is performed by the Lake Charles Stevedores, Inc., who is the contracting firm with the I.L.A. Warehouse local No. 1349.

The loading and unloading of ships and barges is performed by the I.L.A. Deep Sea Locals Nos. 1214 and 1180 who also have a contract with the Lake Charles Stevedores, Inc. The only time this personnel loads or unloads rail cars or trucks is when the commodity is going directly to or from car to ship or vice-versa. As stated above, terminal workers do not perform work on vessels.

Separate payrolls are maintained for both the Warehouse workers and the longshore workers.

Maintenance or gearmen do not work on the vessel and the terminal on the same day.

Equipment maintenance is performed off of the docks.

Vessel cargo checkers cannot also be terminal or warehouse checkers on the same day.

The point-of-rest at the Port of Lake Charles has always been established as the place of rest in the transit shed. We have never considered under ship's tackle as a point of rest, inasmuch as the loading or unloading longshore gangs' demarkation is from the place of rest in the transit shed into ship's hold or vice-versa.

When cargo is moved from any of the storage warehouses, either by rail or truck, it is loaded at the storage warehouse by Port personnel and then when it reaches the transit shed, I.L.A. Warehouse personnel performs

the loading or unloading at point-of-rest in the transit shed.

To summarize the above; Deep Sea Longshore Workers' responsibility is from "point-of-rest" into ship or vice-versa. I.L.A. Warehouse workers' responsibility is from "point-of-rest" into rail cars or trucks or vice-versa.

The Port of Lake Charles has a published tariff governing the various charges assessed against shippers, ships, or consignees and their charge against such stevedore operating on the docks is $600.00 per year.

GULF COAST

MOBILE, ALABAMA

6. Mobile, Alabama

   a. Alabama State Dock facility and private terminal.

   b. The stevedoring functions stop at the "point-of-rest". At the State Docks their own employees (a separate I.L.A. Union) perform the terminal operations with the vessel work being performed by Longshoremen. At the private facility, the facility employees perform the loading/unloading operations.

   c. Terminal workers cannot work on the vessel or vice-versa.

   d. Separate payrolls are maintained.

   e. Maintenance or Gearmen cannot work on the vessel. There might be an incident because of an emergency repair nature that the individual would actually go on the vessel. These employees belong to a separate I.L.A. Local.

   f. Equipment maintenance is performed in the garage adjacent to the pier area.

g. Vessel Cargo Checkers cannot be terminal and warehouse checkers on the same day.

h. At the State facility, their employees (I.L.A. Union) perform the truck and car loading/unloading. Containers are stuffed and stripped by I.L.A. Longshoremen under separate terms and conditions in the Longshore agreement. These containers are handled in an area at the dock and then taken to a parking area. At the time the vessel loads, then the Longshore Gang picks the containers up from this area and brings or takes them from ship side. There is no mingling of labor.

GULF COAST

NEW ORLEANS, LOUISIANA

New Orleans, Louisiana

a. Generally, the break bulk piers are owned by the New Orleans Dock Board, an arm of the State Government, but operated by Steamship Lines and/or Agents under preferential assignment. The Dock Board also owns one bulk facility and one grain elevator and container facility. There are also private grain elevators and private bulk facilities.

b. In all of the facilities the stevedoring functions stop at the "point-of-rest" where the terminal operations begin. The stevedoring is performed by contract Stevedores. The terminal operations are performed as follows: House Stevedores of Steamship Companies; Contract Stevedores; Private Car or Truck Unloading Companies. These terminal functions are performed under the tarriff as published by the Board of Commissioners of the Port of New Orleans.

c. The stevedoring functions are covered by the collective bargaining agreement with all of the other facets of the operation such as the terminal work, coopering, and car truck loading/unloading covered by separate I.L.A. collective bargaining agreements. Terminal workers do not work on the vessel or vice-versa.

d. Separate payrolls are maintained.

e. Maintenance and Gearmen do not work on the vessels, however, this is not to say that if at some time or another because of an emergency they may not go on a vessel.

f. Equipment maintenance is performed at the garage from a mile to 15 miles from the pier, naturally depending upon the pier's location.

g. Vessel Cargo Checkers cannot be terminal and warehouse checkers on the same day. They may work either/or.

h. Truck or car loading/unloading is performed either by the Stevedores or a private contractor under a separate collective bargaining agreement. Containers are stuffed and stripped by I.L.A. Longshoremen under separate terms and conditions in the Longshore agreement. These containers are handled in an area at the dock and then taken to a parking area. At the time the vessel loads, then the Longshore Gang picks the containers up from this area and brings or takes them from ship side. There is no mingling of labor.

GULF COAST

PASCAGOULA, MISSISSIPPI

Pascagoula, Mississippi

a. County facilities.

b. Stevedoring functions stop at the "point-of-rest" and the stevedoring and terminal operations are per-

formed by the Stevedores with the stevedoring operations under one collective bargaining agreement and the terminal operations under a separate collective bargaining agreement.

c. There is a definite Union contract division or allocation of the workers, with a terminal worker not being able to work on a vessel on the same day or vice-versa. This is to say that an individual may not work on the same day on two separate functions, however, he is always rehired and works under a different agreement with different pay.

d. Separate payrolls are maintained.

e. Maintenance and Gearmen do not work on the vessel.

f. Equipment maintenance is performed in the garage adjacent to the pier.

g. Vessel Cargo Checkers cannot be terminal checkers on the same day.

h. The truck and car, loading/unloading is performed by the Warehousemen's Union and/or employees of the Stevedores. No containers are handled.

WEST COAST OF FLORIDA

PENSACOLA, FLORIDA

Pensacola, Florida

a. Port facilities.

b. The facility is a City operated facility. The stevedoring functions stop at the "point-of-rest".

c. Terminal workers cannot work on the vessel.

d. Separate payrolls are maintained.

e. Maintenance or Gearmen do not work on the vessel on the same day or under the same collective bargaining agreements.

f. Equipment maintenance is performed in the garage adjacent to the pier.

g. Vessel Cargo Checkers cannot be terminal and warehouse checkers on the same day. There is an occasion when a man may work on two different jobs with his pay being maintained on two separate payrolls, however, they are two separate and distinct functions.

h. City Dock employees perform the work. No containers are handled.

WEST COAST OF FLORIDA

TAMPA

1) *Port of Tampa, Florida*

2) *Terminal Facilities*

a) *Ownership*—Privately owned

b) *Leased or Assigned—By/To—N/A*

c) *Area of Stevedoring Operations*—Aboard ship to/from point of rest in transit shed and/or storage area; maximum distance 500'.

d) *Area of Terminal Operations*—From point of rest in transit shed or open storage area to truck or rail car.

3) *Union Contracts*

a) *Stevedoring*—ILA Local 1402

b) *Terminal*—ILA Local 1569

c) *Clerking*—ILA Local 1691

d) *Mechanics*—Company personnel.

4) *Payroll Practices*

Separate time sheets and payrolls are maintained for each operation whether it be ship board or warehouse/terminal.

5) *Maintenance and Gear*

Maintenance and/or gear men could be involved in shipboard as well as terminal operations during the same pay period.

6) *Checking*

Shipside as well as terminal clerks are employed under an eight hour guarantee. A man is employed either for shipside work or terminal work. Clerking operations can not be commingled.

7) *Truck Loading/Unloading Practices*

Terminal labor performs truck and rail car loading/unloading.

8) *Company Operations*

All stevedoring companies are licensed by the Tampa Port Authority. These companies also perform terminal operations. Tampa Port Authority does not engage in any cargo handling services.

9) *Contract Excerpts*

South Atlantic Deepsea Longshore Agreement —ILA

13(A)(1) Longshore work is to cover all labor used in connection with loading or discharging ships, barges or other floating craft. It will include men engaged in handling cargo to or from point of rest or to or from cars or trucks when handled direct to or from ships. It will

include all operators of mechanical equipment used in such operations, including cranes owned by stevedore contractors when qualified operators are available, provided, however, that this shall not require the Employers to alter any existing practices. When a stevedore contractor introduces new mechanical equipment he must endeavor to train men presently in the industry to operate such equipment. It will also cover sorting, coopering or reconditioning of cargo when performed in connection with stevedoring work; the handling of ships stores when not carried by hand up the gangway; the handling of baggage to and from ship's deck of passenger vessels; all mail; dunnaging (excluding bulk separations), rigging (excluding rigging for heavy lifts) and the following operations when vessel is alongside dock; cleaning of cargo area aboard ship, lashing and securing cargo and the fitting and dismantling of fittings. It will also include gearmen (not mechanics) when assigned to ships; the operation of permanently mounted shipboard cranes and winches, and the handling of lines when performed by stevedores. It also includes opening and closing of hatches on conventional type vessels with tween decks when working general cargo.

13(A)(2) The point of rest referred to in Clause 13(A) is defined as follows on general cargo:

(a) On cargo to be loaded aboard ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(b) On cargo to be discharged from ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is placed upon completion of discharge from ships.

(c) On cargo to be loaded aboard ships as well as discharged from ships, such cargo will not be considered to be at point of rest until complete carload or truckload lots are completely assembled.

(d) All provisions of this Clause shall apply to refrigerated cargo, but this Clause shall not be so literally or strictly construed as to endang r or risk spoilage of refrigerated cargo.

(e) On cargo other than bulk commodities landed directly from the vessel to trucks or rail cars for movement only within the terminal area to ground storage, the point of rest is that point within the terminal area where the cargo is grounded.

WAREHOUSE CONTRACT—ILA

2. This Agreement shall be effective from 12:01 A.M. March 4, 1972, and continue in effect until midnight September 30, 1974. This Agreement shall cover all warehouse work and other labor performed in connection with cargo, including sampling, manipulating, recoopering or otherwise handling of cargo at the Port of Tampa.

9. It is understood and agreed these warehouse rates do not apply when cargo moves direct to or from vessel from cars or trucks through

the medium of men in car unloading and placing on dock or in warehouse, longshoremen picking same up and proceeding to or from vessel.

GULF COAST PORTS

TEXAS PORTS INCLUDING GALVESTON AND HOUSTON

A. Working practices for the Ports of Lake Charles, Louisiana, Port Arthur, Orange, Beaumont, Port Neches, Houston, Texas City, Galveston, Freeport, Port Lavaca, Corpus Christi and Brownsville, Texas.

B. The "Deepsea and Coastwise Longshore and Cotton Agreement" covers all of the above listed ports. Subject contract covers all work aboard the vessel and the moving of cargo from and to the pile (place of rest) and direct discharge at end of ship's tackle into trucks and/or railcars.

Import containers which are destined to one of the holding yards within the port area are landed on bogies and are driven by longshoremen to the holding yard. The container is then removed by yard personnel (warehousemen). Containers leaving the port area are landed on bogies furnished by and driven by receiver personnel, who are not members of waterfront unions. This is considered place of rest. The reverse is true on export containers.

There are one or more warehouse agreements in each port. There are slight variations in each one but the one thing in common is that in each and every agreement is the fact that their work begin at the pile (place of rest) on inbound cargo and stops at the pile (place of rest) on outbound cargo.

All warehouse work is done under the Warehouse Agreements and at no time will you find warehousemen doing longshore work or longshoremen doing warehouse work during the course of the day.

Warehouse work is controlled by the Port Authorities at all ports except the Port of Houston. There are privately owned public terminals as well as the Port Authority terminals in Houston. While the private terminals do their own warehouse work, they are governed by a warehouse agreement similar to the one covering the port Authority.

C. Deepsea and coastwise Agreements Provision.
Rule 20. Longshore Work (In Part).

Longshore labor also includes all men who truck cargo direct to and from pile or car, to or from the ship's side to hatches. The important distinction being whether or not the freight being handled once, that is to say, laid down or piled.

Warehouse Agreement.
Rule 1. Scope of Work (In Part)

Warehouse worker shall have jurisdiction over all warehouse work done by the above named employer or employers. They shall have jurisdiction over all carloading and unloading from railcar to pile and from pile to car, loading and unloading truck and vehicles when under the jurisdiction of the employer.

D. Separate payrolls are maintained for longshoremen and warehouse workers. In fact, separate payrolls are maintained by each local union.

E. Maintenance/gearmen are allowed by their unions to work aboard the vessel if needed and the terminal on the same day.

F. Equipment including machinery is maintained at each individual Companies Gear Room which are located in adjacent areas around the port.

G. Cargo checkers are not allowed by the union labor agreement to work for a Steamship Agent/Stevedore and a Terminal Operator on the same day.

GREAT LAKES

CHICAGO, ILLINOIS

Port of Chicago, Illinois—Great Lakes Region

Chicago, Illinois—Public Terminal Facilities	(5)
Public Terminals owned by City of Chicago	(2)
Public Terminals owned by Chicago Regional Port District	(3)
Chicago, Illinois—Private owned Terminal Facilities	(4)

The 5 Public Terminal Facilities are leased to:—North Pier Terminal Company, (2) Calumet Harbor Terminals Inc. and Great Lakes Storage and Contracting Company.

The 4 private owned Terminal facilities are owned by —Lykes Youngstown, Inc., International Great Lakes Shipping Company—Federal Commerce and Navigation Inc.,—and EmEs Company Warehousing and Marine Terminal Corporation.

With the exception of Emesco Terminal—all terminals —private or public within the Seaport of Chicago employ I.L.A. labor. Emesco Terminal employs I.L.A. labor to stevedoring from vessel to point of rest—within the yard.

Teamster Labor is employed by Emesco in the Physical Operation—of loading freight to truck or railcar, as well as receiving freight from truck or railcar. When cargo is received at Emesco Terminal—Teamster Labor receives the freight—directs it to point of rest—thence is loaded to vessel by I.L.A. Labor or Stevedore Gangs.

The ordinary procedure at Federal Marine Terminal—International Great Lakes Shipping Company Terminal and Lykes Youngstown-Transoceanic Terminal Corporation is as follows—(Vessel considered to be at Terminal)

1. Stevedore Gangs designated as (a) Steel Gang (b) Ship Gang (Ship Gang indicates General Cargo Gang or Container Gang) (c) Heavy Lift Gang (d) Barge Gang, etc. Employees for work on the terminal in the transit shed or yard are ordered through the hall as to number of drivers and laborers. Orders are placed with the Union Hall prior to 5:00 P.M. for the following days hiring.

Checkers—Hiring orders are placed prior to 5:00 P.M. for the following days hiring. The orders consist of number of men required, dependent upon number of stevedore gangs ordered as well as the amount of operation of truck or car receiving and delivery, a sorting of cargo, etc. At 0800 A.M. the number of checkers hired receive their work assignments—2 checkers are assigned to each stevedore gang—remaining checkers are assigned to terminal functions of truck or railcar loading or receiving of truck or railcar commodities, or assigned to sorting of cargo—stripping or stuffing of container, etc.

Terminal Workers may at the termination of a four hour work shift, exercise seniority rights and replace a less senior employee of vessel work —that is become part of the ship gang. The opposite is also true, namely that an employee within the ship gang may exercise seniority over a terminal employee at the termination of a four hour period.

Separate payrolls are maintained for vessel gangs, terminal and/or warehouse workers. The latter are paid weekly—the former must be paid as of noon the following day after vessels loading or discharging is completed.

Crane Operators—Maintenance men—Mechanics are paid weekly—as these individuals are generally employed on a forty hour work week.

Maintenance men work on the terminal only.

Gearmen during vessels presence generally are assigned a vessel status—as these duties involve providing different sets of working gear to the gangs, delivering same to the initial point of rest at the spot underneath or adjacent to the hook or end of ship's tackle.

Mechanics—perform equipment maintenance within the terminal limits, generally within an enclosed Maintenance Area.

One mechanic is generally assigned to structuring two longshore gangs when working vessels. His duties may occasionally involve activity aboard vessel in repairing and maintaining lift trucks within the vessel's hold.

Crane Operators, if needed, are assigned to a specific gang and are considered a part of the gang structure.

Crane Operators may be assigned terminal employment in loading of railcars or discharging of same.

Vessel Cargo Checkers may exercise seniority upon completion of four hour period and providing they have informed their supervisor prior to the ordering time hour in which replacements may be ordered through the Union Hall.

Truck and Carloading/unloading is performed by Longshoremen and Checkers who are obtained by placing orders through the Union Hall indicating the number of Lift Truck Operators and number of Laborers required to make up the number of individual loading or unloading teams required, Ordering of checkers is performed by calling the

Union Representative and indicating how many Checkers are required for the terminal operation the following day.

Longshoremen—Operators and laborers ordered to report to the terminal at designated hours of hiring—that is 0800-1300 or 1900—Checkers ordered in the same way.

At the hiring times indicated above, Terminal Foremen or Warehouse Foremen hire by seniority the number of Operators and Laborers requested from the Union Hall. Teams of drivers and laborers are made up as required—that is—for loading steel coils to trucks—a team could consist of one driver and one laborer. The teams are assigned duties such as truck loading, unloading, etc.

At the same hiring time—the number of checkers requested from the Union are hired according to seniority, and assigned to the car loading team or teams as required.

Terminal Operation—involving Ship Loading or Unloading—break bulk vessel.

1. Number and type of Loading or Unloading Gangs are ordered from Union Hall prior to 1700 of the day preceeding the hiring date. Hour and date of reporting are indicated to Union dispatcher. Number of Fork Lift Drivers and Laborers required for other terminal work are also ordered at the same time.

2. Union Steward of the Checker Union is advised prior to 1700 of the preceeding day of the number of Checkers required for the following day to perform the support functions to the ship gang, as well as for the pure terminal operations.

3. Generally, Crane Operators and Mechanics are on a weekly forty hour guarantee performing maintenance work on equipment or performing work within normal terminal operation requirement. If these men are not on a forty hour guarantee, orders are placed through their Union Hall prior to 1700 for hiring at 0800 the following morning. The Crane Operators upon reporting for work will be assigned as support to a longshore gang working a vessel as needed, or assigned to a terminal team performing carloading/unloading as required.

   Mechanics will be assigned maintenance work within the maintenance shop area.

4. On day of operation—(Vessel loading or unloading—and normal Terminal Operations)—at time in which gangs have been issued instructions by their Union dispatcher to report for work, a body of men show up at the terminal hiring stand ten minutes prior to the hour indicated by their Union as the hour of reporting. Individual Hatch Bosses hire men—(Operators and Laborers) by seniority to the number of each category required by the Union Contract for the particular designated gang type—(Ship Gang—Steel Gang, etc.)

   Terminal and Warehouse Foreman hire the number of Operators and laborers required to perform their particular operations of the day—that is for carloading/unloading, sorting, recoupering, cleanup, etc., and assign these men into working teams as required by Union Contract for performing the assigned functions.

Checkers are hired in similar manner—generally by a designated supervisor, who hires in accordance with seniority and assigns checkers to ship gangs or terminal work in accordance with seniority.

5. Vessel Discharging Operation

   Cargo discharged from deck—hold or cell of vessel to end of ship's or crane tackle cargo then may be removed to yard area which constitutes final point of rest, as any movement hereafter will generally be to car loading. Cargo may be removed from end of ship's tackle or crane tackle to doorway of transit shed or just inside transit shed where houseman hired by the terminal staff will stow inside the shed, constituting the final point of rest. Any movement hereafter will generally be car loading. The houseman mentioned herein (quote union contract)

   > "Shall not be assigned to a vessel or to a ship gang, or to a commodity. All housemen can be utilized for any job in and around the house, dock or yard. If an employee is assigned to a commodity in conjunction with loading or discharging of a vessel and work is interrupted, such employee shall not be reassigned during such interruption of work".

6. Vessel Loading Operator

   Cargo from yard area brought to ship's tackle by ship gang drivers, thence loaded to ship's deck, hold or cell—(final point of rest).

   Cargo removed from transit shed—brought from transit shed to shipside by ship gang

drivers, brought to ship's tackle, thence loaded to ship's deck, hold or cell—(final point of rest).

7. Receiving of Export Cargo—that is—Receiving of Cargo for ultimate loading to vessel.

   From truck—received by terminal team consisting of Checker—Operator and number of Laborers required by Union Contract—delivered from truck bed to yard ground or transit shed floor as required—Any future movement would be by employees forming ship gang.

   From railcar—Same as above.

8. Carloading of Import Cargo from Vessel Discharge—

   Subsequent movement of cargo, after placed in resting spot by ship gang drivers, would be performed as car loading operation by terminal employees hired only for this particular work.

   Subsequent movement of cargo inside transit shed after being stowed by Housemen providing support for discharge gang would be performed as car loading operation by terminal employees hired only for this particular work.

GREAT LAKES

DETROIT, MICHIGAN

A. Port of Detroit, Detroit, Michigan

B. All terminal facilities in Detroit are privately owned and operated, each is both a stevedore and terminal operator.

C. Labor Contracts allow workers to work either on vessels or in the terminal. Seniority and skill are the only basis of job assignment (crane operator, lift truck operator, checker, mechanic, etc.)

D. One payroll covers all hourly employees. (There are divisions made to compute cost on vessels and terminal operations.)

E. It is possible for maintenance men and gearmen to work on vessels and on the terminal on the same day.

F. Equipment maintenance is performed generally on the terminal. However, there are times when a lift truck is repaired in the hold of a vessel. Some work is contracted to outside contractors on occasion.

G. Checkers can perform checking both on vessels and terminal on the same day.

H. The terminal operator employs all labor for truck and rail loading and unloading.

The general practice in the Port of Detroit is that of dock wide seniority. If a man is qualified to perform more than one job, seniority then determines which job he will have on any given day. A man could be a signalman on a vessel, hi-lo operator on the dock and checker in the warehouse, all in the same day. His rate of pay for the day is determined by the highest rated job he performed that day.

GREAT LAKES

MILWAUKEE, WISCONSIN

Initially, we should remark that the stevedore—terminal operator, Hansen Seaway, has entered into an agreement with Local 815, International Longshoreman's As-

sociation which recognizes the union as the sole and exclusive bargaining agent for all employees of the Employer with respect to rates of pay, working conditions, hours and days of work.

Within this local, however, are two separate and distinct divisions; Longshore and Warehouse, each chartered separately to represent their respective members. Individual agreements are in effect and each are consistently segregated from the other's jurisdiction.

Article I, Section 1.3 of the Longshore Agreement defines "loading vessels as taking goods from the last place of rest into the ship and unloading vessels as taking goods from the ship to the first such place of rest".

Cargo is discharged from the vessel, and released from either the vessel's or shore cranes' gear at the "end of ship's tackle", on the string-piece. From this location, it is moved to an assigned location either in the warehouse or on the farm area by the fork lift driver assigned to the stevedore gang. This location of temporary storage, awaiting final delivery to consignee's inland carrier is called the "place of rest". The reverse procedure is followed during loading operations.

In no way, whatsoever, may an employee who is covered under the Warehouse Agreement be assigned to this operation. Article II, Section 3.1(i) covers this rule as follows, "When regular warehousemen are employed on a vessel during their regular working hours, they shall be paid the applicable longshore rate, including minimums, in addition to their regular warehouse wages.

You should also note that our longshore and warehouse agreements each specify different rates of pay for all classifications. Of particular significance is the similar function of fork lift operators which is classified as $6.10 per hour while driving on the dock and assigned

to a stevedore gang as well as $5.85 per hour while driving and assigned to warehouse duties.

Hiring is performed through the Employer's Employment Office and must be distinctly specified as to longshore or warehouse assignment. Once again, this "place of rest" is the practical and legal boundary of each division's jurisdiction.

Separate payrolls are maintained for longshoremen and warehousemen and checks are issued at different time, i.e., Friday at noon for warehousemen and Thursday from 9 A.M. to 6 P.M. for longshoremen.

Maintenance men (janitors) are covered under the Warehouse Agreement and at no time, may they be employed on a vessel without payment of both longshore and warehouse wages for each hour of work so employed.

Checkers may be assigned duties of tallying cargo anywhere on the pier but once again, if employed on the vessel, they will be paid duplicate wages.

Warehousemen, only, perform truck and car unloading except for those cases where the "end of ship's tackle" coincides with the "place of rest" (i.e. discharging or loading cargo directly into a truck or rail car which, therefore, does not touch the ground). In this case, the longeshoremen assigned to dockman's duties will perform the actual slinging or unslinging

Furthermore, it should be indicated that regular warehousemen are entitled to 40 hours guaranteed of work per week, paid holidays and vacation pay whereas, longshoremen do *not* enjoy any of those benefits.

PACIFICT COAST AND HAWAII

EUREKA, CALIFORNIA

(1) Port of Eureka, California.

(2) Terminal facilities in the Port.

A. Crown Simpson Pulp Mill
B. Louisiana Pacific Redwood Dock
C. Louisiana Pacific Chip Dock
D. Humboldt Dock and Shipping
E. Eureka Forest Products
F. Olson Terminals
G. Kramer Lumber Sales

At all of the above terminal facilities, longshoreman work begins at ship's tackle. All work performed on the docks is by terminal personnel and carried on separate payrolls with no connection with ILWU. Stevedores, or PMA organizations.

(3) Maintenance or gearman work on the vessel or in the gear locker only. No work is performed at any terminal.

(4) Cargo checkers work only on the vessel. No checkers work at the terminal or the warehouse.

(5) All truck and car loading/unloading work is done by the terminal employees on the terminal payroll.

The only exception to the above would be when discharging containers. Direct transfer is performed by terminal employees. Only on rare occasions is it necessary to have to take containers into the yard and reload at a later date. When this does happen, we add one longshoreman per truck as ghost riders.

PACIFIC COAST AND HAWAII (Container Cargo)

The following relates to container cargo handling performed at various ports on the Pacific Coast and at Honolulu, Hawaii where the container terminal operator and stevedore employer are the same legal entity. The Pacific Coast ports involved are Oakland and Los Angeles, the major container ports on the Pacific Coast, with Los Angeles being second only to the Port of New York nationwide.

1. *Container Vessel Stevedoring*:

I.L.W.U. longshore labor comprise the CVS group and move containers between the vessel and the point of rest in an area designated as the Container Yard.

2. *Container Yard*:

I.L.W.U. terminal workers handle the cargo after receipt from the CVS group and deliver containers to the consignee or its truckman, or receive cargo from shippers. CVS personnel also transport containers between the Container Yard and the Container Freight Station. On some occasions when containers are pre-positioned on wheels teamster union drivers may proceed directly to the CY and hook up awaiting containers.

3. *Payroll and Allocation*:

CVS and CY personnel are paid from separate payrolls and there is not interchange of functions between the CVS and CY groups.

4. *Container Freight Station*:

This is the area where containers are stuffed and stripped by I.L.W.U. labor. CFS personnel may not engage in CVS or CY activities. In some instances teamster labor unloads or loads trucks at the CFS at the direction of CFS employees. Each CFS is manned by a separate work force and paid from a CFS payroll.

IN THE

Supreme Court of the United States

No. 76-730

WILLIAM T. ADKINS
Petitioner,

v.

I. T. O. CORPORATION OF BALTIMORE AND LIBERTY MUTUAL INSURANCE COMPANY

and

NATIONAL ASSOCIATION OF STEVEDORES,
Respondents.

MEMORANDUM OF RESPONDENTS I. T. O. CORPORATION OF BALTIMORE AND LIBERTY MUTUAL INSURANCE COMPANY

David R. Owen
10 Light Street
Baltimore, Maryland 21202

Attorney for I. T. O. Corporation
of Baltimore and Liberty Mutual
Insurance Company

No. 76-730

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MEMORANDUM OF RESPONDENTS I. T. O. CORPORATION OF BALTIMORE AND LIBERTY MUTUAL INSURANCE COMPANY

Respondents I. T. O. Corporation of Baltimore and Liberty Mutual Insurance Company agree with Petitioner and with Respondent National Association of Stevedores that a Writ of Certiorari should issue, and urge the Court to grant the Petition.

Respondents are aware that on December 6, 1976, the Court granted Petitions for Certiorari in two similar cases from the Court of Appeals for the Second Circuit,[1] and that Petitions for Certiorari are pending in six other cases, from the First, Fourth and Fifth Circuits.[2] The central issue in all of these cases is: To what extent, if any, did the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act[3] extend coverage to employees of marine terminal operators where the employees perform exclusively land-based functions? There are, however, important factual differences between these cases, and apparently important differences as to the completeness *vel non* of the respective records. The instant case offers a particularly full and revealing record of the various terminal operations at issue.

The record in the instant case contains a survey by the National Association of Stevedores, a party hereto,

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[1] *Northeast Marine Terminal Company, Inc., et al. v. Caputo, et al.*, No. 76-444; *International Terminal Operating Co., Inc. v. Blundo, et al.*, No. 76-454.

[2] *John T. Clark & Son of Boston, Inc., et al. v. Stockman, et al.*, No. 76-571; *Marine Terminals, Inc., et al. v. Brown* and *Harris*, No. 76-706; *P. C. Pfeiffer Co., Inc., et al. v. Ford, et al.* and *Ayers Steamship Company, et al. v. Bryant, et al.*, No. 76-641.

[3] 33 U.S.C. §902 (3) (4), 903 (a).

of the terminal practices in all the major ports in the United States. Because of the uniquely complete record, we submit that the instant case offers this Court additional, meaningful help in deciding the important questions involved.

There is a second reason why, we think, the Petition here should be granted and the case consolidated with *Caputo* and *Blundo*. This Court will be faced with the task of establishing a rationale for determining the dividing line between federal and state coverage, a task which is infinitely more difficult than that performed by the Court in *Nacirema Operating Company, Inc. v. Johnson*, 396 U.S. 212 (1969), where the dividing line was merely the water's edge. As is apparent from each of the opinions in these cases, in the First, Second, Fourth and Fifth Circuits, the controversy is framed in terms of whether the dividing line is the "point of rest" of the cargo and, if so, where that "point of rest" is. The instant case was the first one to be argued in and decided by any Court of Appeals. The briefs and oral arguments presented and developed the "point of rest" theory for the first time in any court. At the first argument before the three-judge panel, the "point of rest" approach was adopted by the majority and rejected by the dissenter. On re-argument *en banc*, the same

result was reached in *Adkins* by a 4-2 vote, the three panel judges adhering to their prior position as to "point of rest" and a fourth judge concurring in the result. In subsequent arguments and decisions in the First, Second and Fifth Circuits, the question has basically been whether or not the Fourth Circuit majority was right. The other courts have held that it was wrong, although Judge Lumbard, dissenting in the Second Circuit, agreed with the Fourth.

Our point is that, since this Court will be asked to pass upon the "point of rest" rationale, it should have before it the record, arguments, and other important elements of the first case under the 1972 Amendments in which it was judicially recognized.

For these reasons, we agree with Petitioner and with Respondent National Association of Stevedores that this Petition should be granted.

Respectfully submitted,

David R. Owen
10 Light Street
Baltimore, Maryland 21202

Attorney for I. T. O. Corporation of Baltimore and Liberty Mutual Insurance Company